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ABSTRACT

The first of the nine parts of this compilation of laws concerns elementary and secondary education programs and contains: (1) the Elementary and Secondary Education Act of 1965, which addresses basic education, critical skills improvement, assistance for magnet schools, special programs, drug education, school dropout problems, and bilingual education; (2) the Omnibus Budget Reconciliation Act of 1981, which concerns human services programs; (3) Public Law 874, which deals with financial assistance for local educational agencies; and (4) Public Law 815, relating to the construction of school facilities in areas affected by Federal activities. Part II, which is concerned with the education and training of individuals with disabilities, contains the Individuals with Disabilities Education Act and the Education of the Deaf Act of 1986. Laws pertaining to Indian education are presented in part III. These laws are the Indian Self-Determination and Education Assistance Act, Indian Education Assistance Act, Snyder Act of 1921, Johnson-O'Malley Act of 1934, Education Amendments of 1978, Tribally Controlled Schools Act of 1988, and Indian Education Act of 1988. Parts IV and V contain the Refugee Education Assistance Act of 1980 and the Stewart B. McKinney Homeless Assistance Act. Title IV of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 is presented in part VI. Title IV deals with the education of native Hawaiians. Part VII contains the Adult Education Act and the National Literacy Act of 1991. Finally, parts VIII and IX contain legislation related to additional programs to improve elementary and secondary instruction and legislation related to public libraries and other public property. (SM)

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A COMPILATION OF FEDERAL EDUCATION LAWS

VOLUME II—ELEMENTARY AND SECONDARY EDUCATION, INDIVIDUALS WITH DISABILITIES, AND RELATED PROGRAMS

As Amended Through December 31, 1992

PREPARED FOR THE USE OF THE

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

MARCH 1993

Serial No. 103-B

Printed for the use of the House Committee on Education and Labor
WILLIAM D. FORD, Chairman

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[1] So in law. Probably should be SUBPART 3—DEFINITIONS. See P.L. 101-589, sec. 205(a)(2), 104 Stat. 2890.

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This Act may be cited as the "Elementary and Secondary Education Act of 1965".

(20 U.S.C. 2701 note)

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CHAPTER 1—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF CHILDREN

SEC. 1001. DECLARATION OF POLICY AND STATEMENT OF PURPOSE.

(a) DECLARATION OF POLICY.—In recognition of—

(1) the special educational needs of children of low-income families and the impact of concentrations of low-income families on the ability of local educational agencies to provide educational programs which meet such needs, and

(2) the special educational needs of children of migrant parents, of Indian children, and of handicapped, neglected, and delinquent children,

the Congress declares it to be the policy of the United States to—

(A) provide financial assistance to State and local educational agencies to meet the special needs of such educationally deprived children at the preschool, elementary, and secondary levels;

(B) expand the program authorized by this chapter over the next 5 years by increasing funding for this chapter by at least $500,000,000 over baseline each fiscal year and thereby increasing the percentage of eligible children served in each fiscal year with the intent of serving all eligible children by fiscal year 1993; and

(C) provide such assistance in a way which eliminates unnecessary administrative burden and paperwork and overly prescriptive regulations and provides flexibility to

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[1] So in law. Probably should be title VIII.

State and local educational agencies in making educational decisions.

(b) STATEMENT OF PURPOSE.—The purpose of assistance under this chapter is to improve the educational opportunities of educationally deprived children by helping such children succeed in the regular program of the local educational agency, attain grade-level proficiency, and improve achievement in basic and more advanced skills. These purposes shall be accomplished through such means as supplemental education programs, schoolwide programs, and the increased involvement of parents in their children's education.

(20 U.S.C. 2701)

PART A—BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

Subpart 1—Allocations

SEC. 1005. BASIC GRANTS.

(a) AMOUNT OF GRANTS.—

(1) GRANTS FOR TERRITORIES.—There is authorized to be appropriated for each fiscal year for the purpose of this paragraph 1 percent of the amount appropriated for such year for payments to States under this section. The amount appropriated pursuant to this paragraph shall be allotted by the Secretary (A) among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for grants under this part, and (B) to the Secretary of the Interior in the amount necessary (i) to make payments pursuant to paragraph (1) of subsection (d), and (ii) to make payments pursuant to paragraph (2) of subsection (d). The grant which a local educational agency in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands is eligible to receive shall be determined pursuant to such criteria as the Secretary determines will best carry out the purposes of this chapter.

(2) GRANTS FOR LOCAL EDUCATIONAL AGENCIES AND PUERTO RICO.—

(A) In any case in which the Secretary determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State is eligible to receive under this subpart for a fiscal year shall (except as provided in paragraph (3)), be determined by multiplying the number of children counted under subsection (c) by 40 percent of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (i) if the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, such amount shall be 80 percent of the average per pupil expenditure in the United States, or (ii) if the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, such amount shall be 120 percent of the average per pupil expenditure in the United States.

(B) In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agency is located, which aggregate amount shall be equal to the aggregate amount determined under subparagraph (A) for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with the basic criteria prescribed by the Secretary.

(C) For each fiscal year, the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. The grant which the Commonwealth of Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of children counted under subsection (c) for the Commonwealth of Puerto Rico by the product of—

(i) the percentage determined under the preceding sentence; and

(ii) 32 percent of the average per pupil expenditure in the United States.

(3) COMPETITIVE GRANTS.—(A) From amounts appropriated for purposes of carrying out this section, the Secretary shall reserve an amount equal to the amount described in subparagraph (B) for purposes of making competitive grants to local educational agencies in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. The Secretary shall make such grants according to the recommendations of the Pacific Regional Laboratory in Honolulu, Hawaii, which shall conduct a competition for such grants.

(B) The amount described in this subparagraph is the portion of the aggregate amount reserved in the fiscal year 1989 under sections 1005(a), 1291, 1404, 1405(a)(2)(A), and 1405(a)(2)(B) for the Trust Territory of the Pacific Islands that was attributable to the Republic of the Marshall Islands and the Federated States of Micronesia.

(C) Subject to subparagraph (D), grants awarded under this paragraph may only be used for—

(i) activities consistent with the purposes of—

(I) title I;

(II) the Adult Education Act;

(III) the Education of the Handicapped Act;

(IV) the Library Services and Construction Act; or

(V) the Dwight D. Eisenhower Mathematics and Science Education Act;

(ii) teacher training;

(iii) curriculum development;

(iv) instructional materials; or

(v) general school improvement and reform.

(D) Grants awarded under this paragraph may only be used to provide direct educational services.

(E) The Secretary shall provide 5 percent of amounts made available for grants under this paragraph to pay the administrative costs of the Pacific Regional Laboratory with respect to the program under this paragraph.

(4) SPECIAL ALLOCATION PROCEDURES.—

(A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (c), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Secretary, which does assume such responsibility, shall be eligible to receive such portion of the allocation.

(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educational agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes of this chapter.

(C) In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency may apply to the Secretary for authority during any particular fiscal year to make the allocations under this part (other than section 1006) directly to local educational agencies without regard to the counties or may continue to make such allocations if the agency had the authority to do so under chapter 1 of the Education Consolidation and Improvement Act of 1981. If the Secretary approves an application of a State educational agency for a particular year under this subparagraph, the State educational agency shall provide assurances that such allocations will be made using precisely the same factors for determining a grant as are used under this part and that a procedure will be established through which local educational agencies dissatisfied with the determinations made by the State educational agency may appeal directly to the Secretary for a final determination.

(5) DEFINITION.—For purposes of this subsection, the term "State" does not include Guam, American Samoa, the Virgin

Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(b) MINIMUM NUMBER OF CHILDREN TO QUALIFY.—A local educational agency shall be eligible for a basic grant for a fiscal year under this subpart only if it meets the following requirements with respect to the number of children counted under subsection (c):

(1) In any case (except as provided in paragraph (3)) in which the Secretary determines that satisfactory data for the purpose of this subsection as to the number of such children are available on a school district basis, the number of such children in the school district of such local educational agency shall be at least 10.

(2) In any other case, except as provided in paragraph (3), the number of such children in the county which includes such local educational agency's school district shall be at least 10.

(3) In any case in which a county includes a part of the school district of the local educational agency concerned and the Secretary has not determined that satisfactory data for the purpose of this subsection are available on a school district basis for all the local educational agencies or all the counties into which the school district of the local educational agency concerned extends, the eligibility requirement with respect to the number of such children for such local educational agency shall be determined in accordance with regulations prescribed by the Secretary for the purposes of this subsection.

(c) CHILDREN TO BE COUNTED.—

(1) CATEGORIES OF CHILDREN.—The number of children to be counted for purposes of this section is the aggregate of—

(A) the number of children aged 5 to 17, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2)(A),

(B) the number of children aged 5 to 17, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B), and

(C) the number of children aged 5 to 17, inclusive, in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to subpart 3 of part D for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

(2) DETERMINATION OF NUMBER OF CHILDREN.—

(A) For the purposes of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census.

(B) For purposes of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census for a family of 4 in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to the Secretary before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to the Secretary at the time of such determination. The Secretary of Health and Human Services shall collect and transmit the information required by this subparagraph to the Secretary not later than January 1 of each year.

(C) When requested by the Secretary, the Secretary of Commerce shall make a special estimate of the number of children of such ages who are from families below the poverty level (as determined under subparagraph (A) of this paragraph) in each county or school district, and the Secretary is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

(d) PROGRAM FOR INDIAN CHILDREN.—

(1) From the amount allotted for payments to the Secretary of the Interior under the second sentence of subsection (a)(1), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Secretary determines will best carry out the purposes of this chapter with respect to out-of-State Indian children in the elementary and secondary schools of such agencies under special contracts with the Department of the Interior. The amount of such payment may not exceed, for each such child, 40 percent of (A) the average per pupil expenditure in the State in which the agency

is located, or (B) 120 percent of such expenditure in the United States, whichever is the greater.

(2) The amount allotted for payments to the Secretary of the Interior under the second sentence of subsection (a)(1) for any fiscal year shall be, as determined pursuant to criteria established by the Secretary, the amount necessary to meet the special educational needs of educationally deprived Indian children on reservations serviced by elementary and secondary schools for Indian children operated with Federal assistance or operated by the Department of the Interior. Such payment shall be made pursuant to an agreement between the Secretary and the Secretary of the Interior containing such assurances and terms as the Secretary determines will best achieve the purposes of this chapter. Such agreement shall contain (A) an assurance that payments made pursuant to this subparagraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of subpart 2 of this part and that the Department of the Interior will comply in all other respects with the requirements of this chapter, and (B) provision for carrying out the applicable provisions of subpart 2 of this part and part F. Such agreement shall consider a tribal organization operating a school under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Tribally Controlled Schools Act of 1987 as a local educational agency, and shall consider the Secretary of the Interior as a State or State educational agency for all purposes defining the authority of States or State educational agencies relative to local educational agencies. If, in the capacity as a State educational agency, the Secretary of the Interior promulgates regulations applicable to such tribal organizations, the Secretary shall comply with section 1451 of this Act and with section 553 of title 5 of the United States Code, relating to administrative procedure, and such regulations must be consistent with subsections (d) and (e) of section 1121, section 1130, and section 1133 of the Education Amendments of 1978.

(e) STATE MINIMUM.—(1) For any fiscal year for which—

(A) sums available for the purposes of this section exceed sums available under chapter 1 of the Education Consolidation and Improvement Act of 1981 for fiscal year 1988; and

(B)(i) sums available for the purpose of section 1006 equal or exceed $400,000,000, or

(ii) sums available for the purpose of section 1005 equal or exceed amounts appropriated for such purpose in fiscal year 1988 by $700,000,000,

the aggregate amount allotted for all local educational agencies within a State may not be less than one-quarter of 1 percent of the total amount available for such fiscal year under this section.

(2) The provisions of paragraph (1) shall apply only if each State is allotted an amount which is not less than the payment made to each State under chapter 1 of the Education Consolidation and Improvement Act of 1981 for fiscal year 1988.

(3)(A) No State shall, by reason of the application of the provisions of paragraph (1) of this subsection, be allotted more than—

(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

(ii) the amount calculated under subparagraph (B),

whichever is less.

(B) For the purpose of subparagraph (A)(ii), the amount for each State equals—

(i) the number of children in such State counted under subsection (c) in the fiscal year specified in subparagraph (A), multiplied by

(ii) 150 percent of the national average per pupil payment made with funds available under this section for that year.

(g)[1] DURATION OF ASSISTANCE.—During the period beginning October 1, 1988, and ending September 30, 1993, the Secretary shall, in accordance with the provisions of this part, make payments to State educational agencies for grants made on the basis of entitlements created under this section.

(20 U.S.C. 2711)

SEC. 1006. GRANTS FOR LOCAL EDUCATIONAL AGENCIES IN COUNTIES WITH ESPECIALLY HIGH CONCENTRATIONS OF CHILDREN FROM LOW-INCOME FAMILIES.

(a) ELIGIBILITY FOR AND AMOUNT OF SPECIAL GRANTS.—

(1)(A) Except as otherwise provided in this paragraph, each county, in a State other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, which is eligible for a grant under this chapter for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if—

(i) the number of children counted under section 1005(c) of this chapter in the school district of local educational agencies in such county for the preceding fiscal year exceeds 6,500, or

(ii) the number of children counted under section 1005(c) exceeds 15 percent of the total number of children aged five to seventeen, inclusive, in the school districts of local educational agencies in such county in that fiscal year.

(B) Except as provided in subparagraph (C), no State described in subparagraph (A) shall receive less than—

(i) one-quarter of 1 percent of the sums appropriated under subsection (c) of this section for such fiscal year; or

(ii) $250,000,

whichever is higher.

(C) No State shall, by reason of the application of the provisions of subparagraph (B)(i) of this paragraph, be allotted more than—

(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

(ii) the amount calculated under subparagraph (B), whichever is less.

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[1] So in original. Probably should be redesignated as "(f)".

(D) For the purpose of subparagraph (C), the amount for each State equals—

(i) the number of children in such State counted for purposes of this section in the fiscal year specified in subparagraph (B),

multiplied by

(ii) 150 percent of the national average per pupil payment made with funds available under this section for that year.

(2) For each county in which there are local educational agencies eligible to receive an additional grant under this section for any fiscal year the Secretary shall determine the product of—

(A) the greater of—

(i) the number of children in excess of 6,500 counted under section 1005(c) for the preceding fiscal year, in the school districts of local educational agencies of a county which qualifies on the basis of subparagraph (A) of paragraph (1); or

(ii) the number of children counted under section 1005(c) for the preceding fiscal year in the school districts of local educational agencies in a county which qualifies on the basis of subparagraph (B) of paragraph (1); and

(B) the quotient resulting from the division of the amount determined for those agencies under section 1005(a)(2) of this chapter for the fiscal year for which the determination is being made divided by the total number of children counted under section 1005(c) for that agency for the preceding fiscal year.

(3) The amount of the additional grant to which an eligible county is entitled under this section for any fiscal year shall be an amount which bears the same ratio to the amount reserved under subsection (c) for that fiscal year as the product determined under paragraph (2) for such county for that fiscal year bears to the sum of such products for all counties in the United States for that fiscal year.

(4) For the purposes of this section, the Secretary shall determine the number of children counted under section 1005(c) for any county, and the total number of children aged five to seventeen, inclusive, in school districts of local educational agencies in such county, on the basis of the most recent satisfactory data available at the time the payment for such county is determined under section 1005.

(5)(A) Pursuant to regulations established by the Secretary and except as provided in subparagraphs (B) and (C) and paragraph (6), funds allocated to counties under this part shall be allocated by the State educational agency only to those local educational agencies whose school districts lie (in whole or in part) within the county and which are determined by the State educational agency to meet the eligibility criteria of clauses (i) and (ii) of paragraph (1)(A). Such determination shall be made on the basis of the available poverty data which such State educational agency determines best reflect the current distribution in the local educational agency of low-income families consistent with the purposes of this chapter. The amount of funds under this part that each qualifying local educational agency receives shall be proportionate to the number or percentage of children from low-income families in the school districts of the local educational agency.

(B) In counties where no local educational agency meets the criteria of clause (i) or (ii) of paragraph (1)(A), the State educational agency shall allocate such funds among the local educational agencies within such counties (in whole or in part) in rank order of their respective concentration and numbers of children from low-income families and in amounts which are consistent with the degree of concentration of poverty. Only local educational agencies with concentrations of poverty that exceed the county wide[1] average of poverty shall receive any funds pursuant to the provisions of this subparagraph.

(C) In States which receive the minimum grant amount under paragraph (1), the State educational agency shall allocate such funds among the local educational agencies in such State by either of the following methods:

(i) in accordance with the provisions of subparagraphs (A) and (B) of this paragraph; or

(ii) without regard to the counties in which such local educational agencies are located, in rank order of their respective concentration and numbers of children from low-income families and in amounts which are consistent with the degree of concentration of poverty, except that only those local educational agencies with concentrations of poverty that exceed the Statewide average of poverty shall receive any funds pursuant to the provisions of this clause.

(6) A State may reserve not more than 2 percent of its allocation under this section for the purpose of making direct payments to local educational agencies that meet the criteria of clauses (i) and (ii) of paragraph (1)(A), but are otherwise ineligible.

(b) PAYMENTS; USE OF FUNDS.—

(1) The total amount which counties in a State are entitled to under this section for any fiscal year shall be added to the amount paid to that State under section 1401 for such year. From the amount paid to it under this section, the State shall distribute to local educational agencies in each county of the State the amount (if any) to which it is entitled under this section.

(2) The amount paid to a local educational agency under this section shall be used by that agency for activities undertaken pursuant to its application submitted under section 1012 and shall be subject to the other requirements in subpart 2 of this part.

(c) RESERVATION OF FUNDS.—

(1) For any fiscal year for which amounts appropriated for part A of this chapter exceed $3,900,000,000, the amounts

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[1] So in original. Probably should be "countywide".

specified in paragraph (2) of this subsection shall be available to carry out this section.

(2)(A) The first $400,000,000 in excess of $3,900,000,000 appropriated for part A of this chapter in any fiscal year shall be available to carry out this section.

(B) Whenever the amounts appropriated for part A exceed $4,300,000,000 in any fiscal year, 10 percent of the amount appropriated for that fiscal year shall be available to carry out this section, except that no State shall, as a result of implementation of paragraph (2) of this subsection, receive less under section 1005 than it received for the previous fiscal year under such section or under section 554(a)(1)(A) of the Education Consolidation and Improvement Act of 1981.

(d) RATABLE REDUCTION RULE.—If the sums available under subsection (c) for any fiscal year for making payments under this section are not sufficient to pay in full the total amounts which all States are entitled to receive under subsection (a) for such fiscal year, the maximum amounts which all States are entitled to receive under subsection (a) for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(20 U.S.C. 2712)

Subpart 2—Basic Program Requirements

SEC. 1011. USES OF FUNDS.

(a) PROGRAM DESCRIPTION.—

(1) A local educational agency may use funds received under this part only for programs and projects which are designed to meet the special educational needs of educationally deprived children identified in accordance with section 1014 and which are included in an application for assistance approved by the State educational agency.

(2) Such programs and projects under paragraph (1) may include preschool through secondary programs; the acquisition of equipment and instructional materials; books and school library resources; employment of special instructional personnel, school counselors, and other pupil services personnel; employment and training of education aides; payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas; the training of teachers, librarians, other instructional and pupil services personnel, and, as appropriate, early childhood education professionals (including training in preparation for the implementation of programs and projects in a subsequent school year); the construction, where necessary, of school facilities; parental involvement activities under section 1016; planning for and evaluation of such programs and projects assisted under this chapter; and other expenditures authorized under this chapter.

(3) State and local educational agencies are encouraged to develop programs to assist eligible children to improve their achievement in basic skills and more advanced skills and to

consider year-round services and activities, including intensive summer school programs.

(b) INNOVATION PROJECTS.—Subject to the approval of the State educational agency, a local educational agency may use not more than 5 percent of payments under this part for the costs of conducting innovative projects developed by the local educational agency that include only—

(1) the continuation of services to children eligible for services in any preceding year for a period sufficient to maintain progress made during their eligibility;

(2) the provision of continued services to eligible children transferred to ineligible areas or schools as part of a desegregation plan for a period not to exceed 2 years;

(3) incentive payments to schools that have demonstrated significant progress and success in attaining the goals of this chapter;

(4) training of chapter 1 and nonchapter 1 paid teachers and librarians with respect to the special educational needs of eligible children and integration of activities under this part into regular classroom programs;

(5) programs to encourage innovative approaches to parental involvement or rewards to or expansion of exemplary parental involvement programs;

(6) encouraging the involvement of community and private sector resources (including fiscal resources) in meeting the needs of eligible children; and

(7) assistance by local educational agencies of schools identified under section 1021(b).

(20 U.S.C. 2721)

SEC. 1012. ASSURANCES AND APPLICATIONS.

(a) STATE EDUCATIONAL AGENCY ASSURANCES.—Any State desiring to participate under this chapter shall submit to the Secretary, through its State educational agency, assurances that the State educational agency—

(1) will meet the requirements in section 435(b)(2) and (b)(5) of the General Education Provisions Act relating to fiscal control and fund accounting procedures;

(2) will carry out the activities required under this chapter with regard to evaluation and school program improvement;

(3) has on file a program improvement plan that meets the requirements of section 1020; and

(4) will ensure that its local educational agencies and State agencies receiving funds under this chapter comply with all applicable statutory and regulatory provisions pertaining to this chapter.

Such assurances shall remain in effect for the duration of participation under this chapter.

(b) LOCAL APPLICATIONS.—A local educational agency may receive a grant under this chapter for any fiscal year if it has on file with the State educational agency an application which describes the procedure to be used under section 1014(b) to assess students' needs and establish program goals, describes the programs and projects to be conducted with such assistance for a period of not more than 3 years, and describes the desired outcomes for eligible children, in terms of basic and more advanced skills that all children are expected to master, which will be used as the basis for evaluating the program or project as required by section 1019, and such application has been approved by the State educational agency and developed in consultation with teachers and parents.

(c) LOCAL ASSURANCES.—Such application shall provide assurance that the programs and projects described—

(1) are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served, are designed and implemented in consultation with teachers (including early childhood education professionals and librarians when appropriate), and provide for parental involvement in accordance with section 1016;

(2) make provision for services to educationally deprived children attending private elementary and secondary schools in accordance with section 1017;

(3) allocate time and resources for frequent and regular coordination of the curriculum under this chapter with the regular instructional program; and

(4) in the case of participating students who are also limited English proficient or are handicapped, provide maximum coordination between services provided under this chapter and services provided to address children's handicapping conditions or limited English proficiency, in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the students' programs.

(20 U.S.C. 2722)

SEC. 1013. ELIGIBLE SCHOOLS.

(a) GENERAL PROVISIONS.—

(1) Subject to subsection (b), a local educational agency shall use funds received under this chapter in school attendance areas having high concentrations of children from low-income families (hereinafter referred to as "eligible school attendance areas"), and where funds under this chapter are insufficient to provide programs and projects for all educationally deprived children in eligible school attendance areas, a local educational agency shall annually rank its eligible school attendance areas from highest to lowest within each grade span grouping or for the entire local educational agency, according to relative degree of concentration of children from low-income families. A local educational agency may carry out a program or project assisted under this chapter in an eligible school attendance area only if it also carries out such program or project in all other eligible school attendance areas which are ranked higher under the first sentence of this paragraph.

(2) The same measure of low income, which shall be chosen by the local educational agency on the basis of the best available data and which may be a composite of several indicators, shall be used with respect to all school attendance areas within a grade span grouping or for the entire local educational agency, both to identify the areas having high concentrations

of children from low-income families and to determine the ranking of each area.

(3) The requirements of this subsection shall not apply in the case of a local educational agency with a total enrollment of less than 1,000 children, but this paragraph does not relieve such an agency from the responsibility to serve eligible children according to the provisions of section 1014.

(b) LOCAL EDUCATIONAL AGENCY DISCRETION.—Notwithstanding subsection (a)(1) of this section, a local educational agency shall have discretion to identify and rank eligible attendance areas as follows:

(1) A local educational agency may designate as eligible and serve all of its attendance areas within a grade span grouping or in the entire local educational agency if the percentage of children from low-income families in each attendance area of the agency is within 5 percentage points of the average percentage of such children within a grade span grouping or for the entire local educational agency.

(2) A local educational agency may designate any school attendance area in which at least 25 percent of the children are from low-income families as an eligible school attendance area if the aggregate amount expended under this chapter and under a State program meeting the requirements of section 1018(d)(1)(B) in that fiscal year in each school attendance area of that agency eligible under subsection (a) in which projects assisted under this chapter were carried out in the preceding fiscal year equals or exceeds the amount expended from those sources in that area in such preceding fiscal year if such attendance areas qualify for such amounts under subsection (c)(1).

(3) A local educational agency may, with the approval of the State educational agency, designate as eligible and serve school attendance areas with substantially higher numbers or percentages of educationally deprived children before school attendance areas with higher concentrations of children from low-income families, but this paragraph shall not permit the provision of services to more school attendance areas than could otherwise be served. A State educational agency shall approve such a proposal only if the State educational agency finds that the proposal will not substantially impair the delivery of deprived children from low-income families in project areas served by the local educational agency.

(4) Funds received under this part may be used for educationally deprived children who are in a school which is not located in an eligible school attendance area when the proportion of children from low-income families in average daily attendance in such school is substantially equal to the proportion of such children in an eligible school attendance area of such agency.

(5) If an eligible school attendance area or eligible school was so designated and served in accordance with subsection (a) in the immediately preceding fiscal year, it may continue to be so designated for the subsequent fiscal year even though it

does not qualify as eligible under such subsection in such additional year.

(6) With the approval of the State educational agency, eligible school attendance areas or eligible schools which have higher proportions or numbers of children from low-income families may be skipped if they are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this part, except that (A) the number of children attending private elementary and secondary schools who receive services under this part shall be determined without regard to non-Federal compensatory education funds which serve eligible children in public elementary and secondary schools, and (B) children attending private elementary and secondary schools who receive assistance under this part shall be identified in accordance with this section and without regard to skipping public school attendance areas or schools under this paragraph.

(c) Allocations.—

(1) Except as provided in paragraph (2), a local educational agency shall allocate funds under this part among project areas or schools on the basis of the number and needs of children to be served as determined in accordance with section 1014.

(2) Children in eligible schools, who receive services under this part and subsequently become ineligible due to improved academic achievement attributable to such services, may continue to be considered eligible for 2 additional years only for the purpose of determining the allocation of funds among eligible schools under paragraph (1). Any funds so allocated shall be used to provide services to any children determined to be eligible under section 1014.

(20 U.S.C. 2723)

SEC. 1014. ELIGIBLE CHILDREN.

(a) General Provisions.—

(1) Except as provided in subsections (c) and (d) of this section and section 1015, a local educational agency shall use funds received under this part for educationally deprived children, identified in accordance with subsection (b) as having the greatest need for special assistance, in school attendance areas or schools satisfying the requirements of section 1013.

(2) The eligible population for services under this part are—

(A) those children up to age 21 who are entitled to a free public education through grade 12, and

(B) those children who are not yet at a grade level where the local educational agency provides a free public education, yet are of an age at which they can benefit from an organized instructional program provided in a school or other educational setting.

(b) Assessment of Educational Need.—A local educational agency may receive funds under this part only if it makes an assessment of educational needs each year to (1) identify educationally deprived children in all eligible attendance areas; (2) identify the general instructional areas on which the program will focus; (3) select those educationally deprived children who have the greatest need for special assistance, as identified on the basis of educationally related objective criteria established by the local educational agency, which include written or oral testing instruments, that are uniformly applied to particular grade levels throughout the local educational agency; and (4) determine the special educational needs (and library resource needs) of participating children with specificity sufficient to ensure concentration on such needs.

(c) LOCAL EDUCATIONAL AGENCY DISCRETION.—(1) Educationally deprived children who begin participation in a program or project assisted under this part, in accordance with subsections (a) and (b) but who, in the same school year, are transferred to a school attendance area or school not receiving funds under this part, may, if the local agency so determines, continue to participate in a program or project funded under this part for the duration of that same school year.

(2) In providing services under this part a local educational agency may skip educationally deprived children in greatest need of assistance who are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this part.

(3) A child who, in the previous year, was identified as being in greatest need of assistance, and who continues to be educationally deprived, but who is no longer identified as being in greatest need of assistance, may participate in a program or project assisted under this part while continuing to be educationally deprived for a maximum of 2 additional years.

(d) SPECIAL RULES.—(1) Children receiving services to overcome a handicapping condition or limited English proficiency shall also be eligible to receive services under this part, if they have needs stemming from educational deprivation and not related solely to the handicapping condition or limited English proficiency. Such children shall be selected on the same basis as other children identified as eligible for and selected to receive services under this part. Funds under this part may not be used to provide services that are otherwise required by law to be made available to such children.

(2) A student who at any time in the previous 2 years was receiving services under subpart 3 of part D of this chapter or under subpart 3 of part B of title I of the Elementary and Secondary Education Act (as amended by chapter 1 of the Education Consolidation and Improvement Act of 1981) shall be considered eligible for services under this part, and may be served subject to the provisions of subsections (a) and (b).

(20 U.S.C. 2724)

SEC. 1015. SCHOOLWIDE PROJECTS.

(a) USE OF FUNDS FOR SCHOOLWIDE PROJECTS.—In the case of any school serving an attendance area that is eligible to receive services under this part and in which, for the first year of the 3-year period of projects assisted under this section, not less than 75 percent of the children are from low-income families or any eligible school in which not less than 75 percent of the children enrolled in the school are from low-income families, the local educational agency may carry out a project under this part to upgrade the entire educational program in that school if the requirements of subsections (b), (c), (d), and (e) are met.

(b) DESIGNATION OF SCHOOLS.—A school may be designated for a schoolwide project under subsection (a) if—

(1) a plan has been developed for that school by the local educational agency and has been approved by the State educational agency which—

(A) provides for a comprehensive assessment of educational needs of all students in the school, in particular the special needs of educationally deprived children;

(B) establishes goals to meet the special needs of all students and to ensure that educationally deprived children are served effectively and demonstrate performance gains comparable to other students;

(C) describes the instructional program, pupil services, and procedures to be used to implement those goals;

(D) describes the specific uses of funds under this part as part of that program; and

(E) describes how the school will move to implement an effective schools program as defined in section 1471, if appropriate;

(2) the plan has been developed with the involvement of those individuals who will be engaged in carrying out the plan, including parents, teachers, librarians, education aides, pupil services personnel, and administrators (and secondary students if the plan relates to a secondary school);

(3) the plan provides for consultation among individuals described in paragraph (2) as to the educational progress of all students and the participation of such individuals in the development and implementation of the accountability measures required by subsection (e);

(4) appropriate training is provided to parents of children to be served, teachers, librarians, and other instructional, administrative, and pupil services personnel to enable them effectively to carry out the plan;

(5) the plan includes procedures for measuring progress, as required by subsection (e), and describes the particular measures to be used; and

(6)(A) in the case of a school district in which there are one or more schools described in subsection (a) and there are also one or more other schools serving project areas, the local educational agency makes the Federal funds provided under this part available for children in such schools described in subsection (a) in amounts which, per educationally deprived child served, equal or exceed the amount of such funds made available per educationally deprived child served in such other schools; and

(B) the average per pupil expenditure in schools described in subsection (a) (excluding amounts expended under a State compensatory education program) for the fiscal year in which the plan is to be carried out will not be less than such expenditure in the previous fiscal year in such schools, except that—

(i) the cost of services for programs described in section 1018(d)(2)(A) shall be included for each fiscal year as appropriate only in proportion to the number of children in the building served in such programs in the year for which this determination is made; and

(ii) if the average per pupil expenditure of the local educational agency is less than such expenditure in the previous fiscal year, the average per pupil expenditure of schools described in subsection (a) may be reduced by the local educational agency in the exact proportion to the average reduction of expenditures for all schools in such agency.

(c) APPROVAL OF PLAN; OPERATION OF PROJECT.—

(1) The State educational agency shall approve the plan of any local educational agency for a schoolwide project if that plan meets the requirements of subsection (b).

(2) For any school which has such a plan approved, the local educational agency—

(A) shall, in order to carry out the plan, be relieved of any requirements under this part with respect to the commingling of funds provided under this chapter with funds available for regular programs;

(B) shall use funds received under this part only to supplement, and to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the school approved for a schoolwide project under paragraph (1);

(C) shall comply with the provisions of section 1018(c); and

(D) may not be required to identify particular children as being eligible to participate in projects assisted under this part but shall identify educationally deprived children for purposes of subsections (b) and (e) of this section.

(d) USE OF FUNDS.—In addition to uses under section 1011, funds may be used in schoolwide projects for—

(1) planning and implementing effective schools programs, and

(2) other activities to improve the instructional program and pupil services in the school, such as reducing class size, training staff and parents of children to be served, and implementing extended schoolday programs.

(e) ACCOUNTABILITY.—

(1) The State educational agency may grant authority for a local educational agency to operate a schoolwide project for a period of 3 years. If a school meets the accountability requirements in paragraphs (2) and (3) at the end of such period, as determined by the State educational agency, that school will be allowed to continue the schoolwide project for an additional 3-year period.

(2)(A) Except as provided in subparagraph (B), after 3 years, a school must be able to demonstrate (i) that the achievement level of educationally deprived children as measured according to the means specified in the plan required by subsection (b) exceeds the average achievement of participating children districtwide, or (ii) that the achievement of educationally deprived children in that school exceeds the average achievement of such children in that school in the 3 fiscal years prior to initiation of the schoolwide project.

(B) For a secondary school, demonstration of lower dropout rates, increased retention rates, or increased graduation rates is acceptable in lieu of increased achievement, if achievement levels over the 3-year schoolwide project period, compared with the 3-year period immediately preceding the schoolwide project, do not decline.

(3) Schools shall annually collect achievement and other assessment data for the purposes of paragraph (2). The results of achievement and other assessments shall be made available annually to parents, the public, and the State educational agency.

(20 U.S.C. 2725)

SEC. 1016. PARENTAL INVOLVEMENT.

(a) FINDINGS; GENERAL REQUIREMENT.—

(1) Congress finds that activities by schools to increase parental involvement are a vital part of programs under this chapter.

(2) Toward that end, a local educational agency may receive funds under this chapter only if it implements programs, activities, and procedures for the involvement of parents in programs assisted under this chapter. Such activities and procedures shall be planned and implemented with meaningful consultation with parents of participating children and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the goals under subsection (b).

(3) For purposes of this section, parental involvement includes, but is not limited to, parent input into the design and implementation of programs under this chapter, volunteer or paid participation by parents in school activities, and programs, training, and materials which build parents' capacity to improve their children's learning in the home and in school.

(b) GOALS OF PARENTAL INVOLVEMENT.—In carrying out the requirements of subsection (a), a local educational agency shall, in coordination with parents of participating children, develop programs, activities, and procedures which have the following goals—

(1) to inform parents of participating children of the program under this chapter, the reasons for their children's participation in such programs, and the specific instructional objectives and methods of the program;

(2) to support the efforts of parents, including training parents, to the maximum extent practicable, to work with their children in the home to attain the instructional objectives of programs under this chapter and to understand the program requirements of this chapter and to train parents and teachers to build a partnership between home and school;

(3) to train teachers and other staff involved in programs under this chapter to work effectively with the parents of participating students;

(4) to consult with parents, on an ongoing basis, concerning the manner in which the school and parents can better work together to achieve the program's objectives and to give parents a feeling of partnership in the education of their children;

(5) to provide a comprehensive range of opportunities for parents to become informed, in a timely way, about how the program will be designed, operated, and evaluated, allowing opportunities for parental participation, so that parents and educators can work together to achieve the program's objectives; and

(6) to ensure opportunities, to the extent practicable, for the full participation of parents who lack literacy skills or whose native language is not English.

(c) MECHANISMS FOR PARENTAL INVOLVEMENT.—

(1) Each local educational agency, after consultation with and review by parents, shall develop written policies to ensure that parents are involved in the planning, design, and implementation of programs and shall provide such reasonable support for parental involvement activities as parents may request. Such policies shall be made available to parents of participating children.

(2) Each local educational agency shall convene an annual meeting to which all parents of participating children shall be invited, to explain to parents the programs and activities provided with funds under this chapter. Such meetings may be districtwide or at the building level, as long as all such parents are given an opportunity to participate.

(3) Each local educational agency shall provide parents of participating children with reports on the children's progress, and, to the extent practical, hold a parent-teacher conference with the parents of each child served in the program, to discuss that child's progress, placement, and methods by which parents can complement the child's instruction. Educational personnel under this chapter shall be readily accessible to parents and shall permit parents to observe activities under this chapter.

(4) Each local educational agency shall (A) provide opportunities for regular meetings of parents to formulate parental input into the program, if parents of participating children so desire; (B) provide parents of participating children with timely information about the program; and (C) make parents aware of parental involvement requirements and other relevant provisions of programs under this chapter.

(5) Parent programs, activities, and procedures may include regular parent conferences; parent resource centers; parent training programs and reasonable and necessary expenditures associated with the attendance of parents at training sessions; hiring, training, and utilization of parental involvement liaison workers; reporting to parents on the children's progress; training and support of personnel to work with parents, to co-

ordinate parent activities, and to make contact in the home; use of parents as classroom volunteers, tutors, and aides; provision of school-to-home complementary curriculum and materials and assistance in implementing home-based education activities that reinforce classroom instruction and student motivation; provision of timely information on programs under this chapter (such as program plans and evaluations); soliciting parents' suggestions in the planning, development, and operation of the program; providing timely responses to parent recommendations; parent advisory councils; and other activities designed to enlist the support and participation of parents to aid in the instruction of their children.

(6) Parents of participating children are expected to cooperate with the local educational agency by becoming knowledgeable of the program goals and activities and by working to reinforce their children's training at home.

(d) COORDINATION WITH ADULT EDUCATION ACT.—Programs of parental involvement shall coordinate, to the extent possible, with programs funded under the Adult Education Act.

(e) ACCESSIBILITY REQUIREMENT.—Information, programs, and activities for parents pursuant to this section shall be provided, to the extent practicable, in a language and form which the parents understand.

(20 U.S.C. 2726)

SEC. 1017. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS.

(a) GENERAL REQUIREMENTS.—To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall, after timely and meaningful consultation with appropriate private school officials, make provisions for including special educational services and arrangements (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) in which such children can participate and which meet the requirements of sections 1011(a), 1012(b)(1), 1013, 1014, and 1018(b). Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

(b) BYPASS PROVISION.—

(1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Secretary shall waive such requirements, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

(2) If the Secretary determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children en-

rolled in private elementary and secondary schools as required by subsection (a), the Secretary shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

(3)(A) The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other concerned organizations or individuals concerning violations of this section. The Secretary shall investigate and resolve each such complaint within 120 days after receipt of the complaint.

(B) When the Secretary arranges for services pursuant to this subsection, the Secretary shall, after consultation with the appropriate public and private school officials, pay to the provider the cost of such services, including the administrative cost of arranging for such services, from the appropriate allocation or allocations under this chapter.

(C) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State or local educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

(D) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsec- tion (a).

(4)(A) The Secretary shall not take any final action under this subsection until the State educational agency and local educational agency affected by such action have had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or a designee to show cause why such action should not be taken.

(B) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(c) PRIOR DETERMINATION.—Any bypass determination by the Secretary under title I of the Elementary and Secondary Education Act of 1965, as in effect prior to July 1, 1988, or chapter 1 of the Education Consolidation and Improvement Act of 1981 shall remain in effect to the extent consistent with the purposes of this chapter.

(d) CAPITAL EXPENSES.—

(1) A local educational agency may apply to the State educational agency for payments for capital expenses consistent with the provisions of this subsection. State educational agencies shall distribute funds to local educational agencies based on the degree of need as set forth in the application. Such an application shall contain information on such capital expenses by fiscal year and shall contain an assurance that any funds received pursuant to this subsection shall be used solely for purposes of the program authorized by this chapter.

(2)(A) From the amount appropriated for the purposes of this subsection for any fiscal year, the amount which each State shall be eligible to receive shall be an amount which bears the same ratio to the amount appropriated as the number of children enrolled in private schools who were served under chapter 1 of the Education Consolidation and Improvement Act of 1981 in the State during the period July 1, 1984 through June 30, 1985, bears to the total number of such children served during such period in all States.

(B) Amounts which are not used by a State for the purposes of this subsection shall be reallocated by the Secretary among other States on the basis of need.

(3) There is authorized to be appropriated $30,000,000 for fiscal year 1988, $40,000,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993. Any sums appropriated under this provision shall be used for increases in capital expenses paid from funds under chapter 1 of the Education Consolidation and Improvement Act or this section subsequent to July 1, 1985, of local educational agencies in providing the instructional services required under section 557 of the Education Consolidation and Improvement Act[1] and this section, when without such funds, services to private schoolchildren would have been or have been reduced or would be reduced or adversely affected.

(4) For the purposes of this subsection, the term "capital expenses" is limited to expenditures for noninstructional goods and services such as the purchase, lease and renovation of real and personal property (including but not limited to mobile educational units and leasing of neutral sites or space), insurance

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[1] So in original. Probably should be "Act of 1981".

and maintenance costs, transportation, and other comparable goods and services.

(20 U.S.C. 2727)

SEC. 1018. FISCAL REQUIREMENTS.

(a) MAINTENANCE OF EFFORT.—

(1) Except as provided in paragraph (2), a local educational agency may receive funds under this chapter for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(2) The State educational agency shall reduce the amount of the allocation of funds under this chapter in any fiscal year in the exact proportion to which a local educational agency fails to meet the requirement of paragraph (1) by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to such local agency), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

(3) Each State educational agency may waive, for 1 fiscal year only, the requirements of this subsection if the State educational agency determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency.

(b) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT REGULAR NON-FEDERAL FUNDS.—A State educational agency or other State agency in operating its State level programs or a local educational agency may use funds received under this chapter only so as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this chapter and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection, no State educational agency, other State agency, or local educational agency shall be required to provide services under this chapter through use of a particular instructional method or in a particular instructional setting.

(c) COMPARABILITY OF SERVICES.—

(1) A local educational agency may receive funds under this chapter only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this chapter. Where all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are substantially comparable in each project area.

(2)(A) A local educational agency shall be considered to have met the requirements of paragraph (1) if it has filed with the State educational agency a written assurance that it has established and implemented—

(i) a districtwide salary schedule;

(ii) a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(iii) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

(B) Unpredictable changes in student enrollment or personnel assignments which occur after the beginning of a school year shall not be included as a factor in determining comparability of services.

(3) Each educational agency shall develop procedures for compliance with the provisions of this subsection, and shall annually maintain records documenting compliance. Each State educational agency shall monitor the compliance of local educational agencies within the States with respect to the requirements of this subsection.

(4) Each local educational agency with not more than 1 building for each grade span shall not be subject to the provisions of this subsection.

(5) Each local educational agency which is found to be out of compliance with this subsection shall be subject to withholding or repayment of funds only to the amount or percentage by which the local educational agency has failed to comply.

(d) EXCLUSION OF SPECIAL STATE AND LOCAL PROGRAM FUNDS.—

(1)(A) For the purposes of determining compliance with the requirements of subsections (b) and (c), a local educational agency or a State agency operating a program under part D of this chapter may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children including compensatory education for educationally deprived children after prior determination pursuant to paragraphs (3) and (4) of this subsection that such programs meet the requirements of subparagraph (B).

(B) A State or local program meets the requirements of this subparagraph if it is similar to programs assisted under this part. The Secretary shall consider a State or local program to be similar to programs assisted under this part if—

(i) all children participating in the program are educationally deprived,

(ii) the program is based on similar performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

(iii) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

(iv) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of this subparagraph, and

(v) the State educational agency monitors performance under the program to assure that the requirements of this subparagraph are met.

(2)(A) For the purpose of determining compliance with the requirements of subsection (c), a local educational agency may exclude State and local funds expended for—

(i) bilingual education for children of limited English proficiency,

(ii) special education for handicapped children, and

(iii) certain State phase-in programs as described in subparagraph (B).

(B) A State education program which is being phased into full operation meets the requirements of this subparagraph if the Secretary is satisfied that—

(i) the program is authorized and governed specifically by the provisions of State law;

(ii) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

(iii) the program is based on objectives, including but not limited to, performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;

(iv) parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

(v) the program will benefit all children in a particular school or grade-span within a school;

(vi) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;

(vii) at all times during such phase-in period at least 50 percent of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families;

(viii) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in such program;

(ix) the local educational agency is separately accountable, for purposes of compliance with the clauses of this subparagraph, to the State educational agency for any funds expended for such program; and

(x) the local educational agencies carrying out the program are complying with the clauses of this subparagraph and the State educational agency is complying with applicable provisions of this paragraph.

(3) The Secretary shall make an advance determination of whether or not a State program meets the requirements of this

subsection. The Secretary shall require each State educational agency to submit the provisions of State law together with implementing rules, regulations, orders, guidelines, and interpretations which are necessary for an advance determination. The Secretary's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent State law affecting the program, the State educational agency shall submit such changes to the Secretary.

(4) The State educational agency shall make an advance determination of whether or not a local program meets the requirements of this subsection. The State educational agency shall require each local educational agency to submit the provisions of local law, together with implementing rules, regulations, guidelines, and interpretations which are necessary to make such an advance determination. The State educational agency's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent local law affecting the program, the local educational agency shall submit such changes to the State educational agency.

(20 U.S.C. 2728)

SEC. 1019. EVALUATIONS.

(a) LOCAL EVALUATION.—Each local educational agency shall—

(1) evaluate the effectiveness of programs assisted under this part, in accordance with national standards developed according to section 1435, at least once every 3 years (using objective measurement of individual student achievement in basic skills and more advanced skills, aggregated for the local educational agency as a whole) as an indicator of the impact of the program;

(2) submit such evaluation results to the State educational agency at least once during each 3-year application cycle;

(3) determine whether improved performance under paragraph (1) is sustained over a period of more than one program year.

(b) STATE EVALUATIONS.—In accordance with national standards, each State educational agency shall—

(1) conduct an evaluation (based on local evaluation data collected under subsection (a) and sections 1107(b), 1202(a)(6), and 1242(d)) of the programs assisted under this chapter at least every 2 years, submit that evaluation to the Secretary and make public the results of that evaluation;

(2) inform local educational agencies, in advance, of the specific evaluation data that will be needed and how it may be collected; and

(3) collect data on the race, age, gender, and number of children with handicapping conditions served by the programs assisted under this chapter and on the number of children served by grade-level under the programs assisted under this chapter and annually submit such data to the Secretary.

(c) SPECIAL CONDITION.—Projects funded under this part that serve only preschool, kindergarten, or first grade students or students in such grade levels who are included in projects serving children above such grade levels shall not be subject to the requirements of subsection (a).

(20 U.S.C. 2729)

SEC. 1020. STATE EDUCATIONAL PROGRAM IMPROVEMENT PLAN.

(a) PLAN REQUIREMENTS.—A State educational agency which receives funds under part A, part C, and part E of this chapter shall develop, in consultation with a committee of practitioners constituted pursuant to section 1451(b) of this chapter, a plan to ensure implementation of the provisions of this section and section 1021. Each such plan shall contain, but shall not be limited to—

(1) the objective measures and standards the State educational agency and other agencies receiving funds under part A, part C, and part E of this chapter will use to assess aggregate performance pursuant to section 1021, and may include implementation of section 1019;

(2) the means the State educational agency will use to develop joint plans with local educational agencies which have identified, pursuant to section 1021(b), schools in need of program improvement to attain satisfactory student progress, the timetable for developing and implementing such plans (within parameters defined pursuant to section 1431) and the program improvement assistance that will be provided to such schools pursuant to section 1021. Such program improvement assistance may include, but shall not be limited to, training and retraining of personnel, development of curricula that has shown promise in similar schools, replication of promising practices in effective schools models, improving coordination between programs assisted under this chapter and the regular school program, and the development of innovative strategies to enhance parental involvement.

(b) DISSEMINATION AND AVAILABILITY OF PLAN.—(1) The State educational agency shall disseminate the plan developed under this subsection[1] to all local educational agencies and other State agencies receiving funds under this chapter.

(2) The State educational program improvement plan shall be available at the State educational agency for inspection by the Secretary and may be amended by the State educational agency after consultation with a committee of practitioners when necessary.

(c) AVAILABILITY OF FUNDS.—In any fiscal year for which appropriations are made pursuant to section 1405, the State educational agency shall fully implement the program improvement activities described in sections 1020 and 1021. In any fiscal year for which appropriations are not made, the State educational agency shall conduct, at a minimum, the activities required under section 1021(d), and other program improvement activities to the extent practicable.

(20 U.S.C. 2730)

SEC. 1021. PROGRAM IMPROVEMENT.

(a) LOCAL REVIEW.—Each local educational agency shall—

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[1] So in original. Probably should be "section".

(1) conduct an annual review of the program's effectiveness in improving student performance for which purpose the local educational agency shall use outcomes developed pursuant to section 1012 and subsection (b) of this section, and make the results of such review available to teachers, parents of participating children, and other appropriate parties;

(2) determine whether improved performance under paragraph (1) is sustained over a period of more than one program year;

(3) use the results of such review and of evaluation pursuant to section 1019 in program improvement efforts required by section 1021(b); and

(4) annually assess through consultation with parents, the effectiveness of the parental involvement program and determine what action needs to be taken, if any, to increase parental participation.

(b) SCHOOL PROGRAM IMPROVEMENT.—(1) With respect to each school which does not show substantial progress toward meeting the desired outcomes described in the local educational agency's application under section 1012(a) or shows no improvement or a decline in aggregate performance of children served under this chapter for one school year as assessed by measures developed pursuant to section 1019(a) or subsection (a), pursuant to the program improvement timetable developed under sections 1020 and 1431, the local educational agency shall—

(A) develop and implement in coordination with such school a plan for program improvement which shall describe how such agency will identify and modify programs funded under this chapter for schools and children pursuant to this section and which shall incorporate those program changes which have the greatest likelihood of improving the performance of educationally disadvantaged children, including—

(i) a description of educational strategies designed to achieve the stated program outcomes or to otherwise improve the performance and meet the needs of eligible children; and

(ii) a description of the resources, and how such resources will be applied, to carry out the strategies selected, including, as appropriate, qualified personnel, inservice training, curriculum materials, equipment, and physical facilities; and, where appropriate—

(I) technical assistance;

(II) alternative curriculum that has shown promise in similar schools;

(III) improving coordination between part A and part C of this chapter and the regular school program;

(IV) evaluation of parent involvement;

(V) appropriate inservice training for staff paid with funds under this chapter and other staff who teach children served under this chapter; and

(VI) other measures selected by the local educational agency; and

(B) submit the plan to the local school board and the State educational agency, and make it available to parents of children served under this chapter in that school.

(2) A school which has 10 or fewer students served during an entire program year shall not be subject to the requirements of this subsection.

(c) DISCRETIONARY ASSISTANCE.—The local educational agency may apply to the State educational agency for program improvement assistance funds authorized under section 1405.

(d) STATE ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES.—(1) If after the locally developed program improvement plan shall have been in effect according to the timetable established under sections 1020 and 1431, the aggregate performance of children served under this chapter in a school does not meet the standards stated in subsections (a) and (b), the local educational agency shall, with the State educational agency, and in consultation with school staff and parents of participating children, develop and implement a joint plan for program improvement in that school until improved performance is sustained over a period of more than 1 year.

(2) The State educational agency shall ensure that program improvement assistance is provided to each school identified under paragraph (1).

(e) LOCAL CONDITIONS.—The local educational agency and the State educational agency, in performing their responsibilities under this section, shall take into consideration—

(1) the mobility of the student population,

(2) the extent of educational deprivation among program participants which may negatively affect improvement efforts,

(3) the difficulties involved in dealing with older children in secondary school programs funded under this chapter,

(4) whether indicators other than improved achievement demonstrate the positive effects on participating children of the activities funded under this chapter, and

(5) whether a change in the review cycle pursuant to section 1019 or 1021(a)(1) or in the measurement instrument used or other measure-related phenomena has rendered results invalid or unreliable for that particular year.

(f) STUDENT PROGRAM IMPROVEMENT.—On the basis of the evaluations and reviews under sections 1019(a)(1) and 1021(a)(1), each local educational agency shall—

(1) identify students who have been served for a program year and have not met the standards stated in subsections (a) and (b),

(2) consider modifications in the program offered to better serve students so identified, and

(3) conduct a thorough assessment of the educational needs of students who remain in the program after 2 consecutive years of participation and have not met the standards stated in subsection (a).

(g) PROGRAM IMPROVEMENT ASSISTANCE.—In carrying out the program improvement and student improvement activities required in subsections (a), (b), (c), and (d), local educational agencies and State educational agencies shall utilize the resources of the regional technical assistance centers and appropriate regional rural assistance programs established by section 1456 to the full extent such resources are available.

(h) FURTHER ACTION.—If the State educational agency finds that, consistent with the program improvement timetable established under sections 1020 and 1431, after one year under the joint plan developed pursuant to subsection (d), including services in accordance with section 1017, a school which continues to fall below the standards for improvement stated in subsections (a) and (b) with regard to the aggregate performance of children served under part A, part C, and part E of this chapter, the State educational agency shall, with the local educational agency, review the joint plan and make revisions which are designed to improve performance, and continue to do so each consecutive year until such performance is sustained over a period of more than one year. Nothing in this section or section 1020 shall be construed to give the State any authority concerning the educational program of a local educational agency that does not otherwise exist under State law.

(i) MUTUAL AGREEMENT.—Before any joint plan may be implemented under subsection (d) and subsection (h) both the local educational agency and State educational agency must approve such plan.

(20 U.S.C. 2731)

PART B—EVEN START FAMILY LITERACY PROGRAMS

SEC. 1051. STATEMENT OF PURPOSE.

It is the purpose of this part to improve the educational opportunities of the Nation's children and adults by integrating early childhood education and adult education for parents into a unified program to be referred to as "Even Start". The program shall be implemented through cooperative projects that build on existing community resources to create a new range of services.

(20 U.S.C. 2741)

SEC. 1052. PROGRAM AUTHORIZATION.

(a) GRANTS BY THE SECRETARY.—In any fiscal year in which the appropriations for this part do not equal or exceed $50,000,000, the Secretary is authorized, in accordance with the provisions of this part which are not inconsistent with the provisions of this subsection, to make grants to eligible entities to carry out Even Start programs.

(b) STATE GRANT PROGRAM.—(1) In any fiscal year in which the appropriations for this part equal or exceed $50,000,000, the Secretary is authorized, in accordance with the provisions of this part, to make grants to States from allocations under section 1053 to enable States to carry out Even Start programs.

(2) In any fiscal year in which this subsection applies, no State shall award a grant under this part for an amount less than $75,000.

(3) In any year in which this subsection applies, each State that receives a grant under this part may use not more than 5 percent of assistance provided under the grant for costs of—

(A) administration; and

(B) the provision, through grant or contract, of technical assistance for program improvement and replication to eligible entities that receive grants under this part.

(c) RESERVATION.—From amounts appropriated for purposes of carrying out this part, the Secretary may reserve an amount equal to not more than 2 percent of such amounts or the amount reserved for such purposes in the fiscal year 1991, whichever is greater, for purposes of—

(1) carrying out the evaluation required by section 1058; and

(2) providing, through grant or contract, technical assistance for program improvement and replication to eligible entities that receive grants under this part.

(d) DEFINITIONS.—For the purpose of this part:

(1) The term "eligible entity" means—

(A) a local educational agency applying in collaboration with a community-based organization, public agency, institution of higher education, or other nonprofit organization; or

(B) a community-based organization, or other nonprofit organization of demonstrated quality applying in collaboration with a local educational agency.

(2) The terms "Indian tribe" and "tribal organization" have the respective meanings given such terms in section 4 of the Indian Self-Determination and Education Assistance Act.

(3) The term "State" includes each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(20 U.S.C. 2742)

SEC. 1053. ALLOCATION.

(a) RESERVATION FOR MIGRANT PROGRAMS AND TERRITORIES.—(1) In each fiscal year in which section 1052(a) applies, the Secretary shall first reserve for programs consistent with the purpose of this part—

(A) for programs for migrant children, which shall be conducted through the Office of Migrant Education, an amount equal to 3 percent of the amount appropriated for purposes of carrying out this part; and

(B) for allocations to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658), and to Indian tribes and tribal organizations, an amount comparable to their relative need.

(2) In each fiscal year in which section 1052(b) applies, the Secretary shall first reserve for programs consistent with the purpose of this part, an amount equal to 5 percent of the amount appropriated for purposes of carrying out this part, of which—

(A) amounts shall be allocated for programs for migrant children, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658), and Indian tribes and tribal organizations, according to their relative need; but

(B) in no case shall the amount reserved for programs for migrant children be less than the amount reserved for such programs in the preceding fiscal year.

(b) STATE ALLOCATION.—Except as provided in section 1052(a) and subsection (c) of this section, each State shall be eligible to receive a grant under this part in each fiscal year that bears the same ratio to the remainder of the amount appropriated under section 1052(b) in that fiscal year as the amount allocated under section 1005 of this Act to the local educational agencies in the State bears to the total amount allocated to such agencies in all States.

(c) STATE MINIMUM.—(1) Subject to the provisions of paragraph (2), no State shall receive less than the greater of—

(A) one-half of one percent of the amount appropriated for this part and allocated under subsection (b) for any fiscal year; or

(B) $250,000.

(2)(A) No State shall, by reason of the application of the provisions of paragraph (1)(A) of this subsection, be allotted more than—

(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

(ii) the amount calculated under subparagraph (B),

whichever is less.

(B) For the purpose of subparagraph (A)(ii), the amount for each State equals—

(i) the number of children in such State counted for purposes of this part in the fiscal year specified in subparagraph (A),

multiplied by

(ii) 150 percent of the national average per pupil payment made with funds available under this part for that year.

(20 U.S.C. 2743)

SEC. 1054. USES OF FUNDS.

(a) IN GENERAL.—In carrying out the program under this part, funds made available to an eligible entity shall be used to pay the Federal share of the cost of providing family-centered education programs which involve parents and children in a cooperative effort to help parents become full partners in the education of their children and to assist children in reaching their full potential as learners.

(b) PROGRAM ELEMENTS.—Each program assisted under this part shall include—

(1) the identification and recruitment of eligible children;

(2) screening and preparation of parents and children for participation, including testing, referral to necessary counseling, other developmental and support services, and related services;

(3) design of programs and provision of support services (when unavailable from other sources) appropriate to the participants' work and other responsibilities, including—

(A) scheduling and location of services to allow joint participation by parents and children;

(B) child care for the period that parents are involved in the program provided for under this part; and

(C) transportation for the purpose of enabling parents and their children to participate in the program authorized by this part;

(4) the establishment of instructional programs that promote adult literacy, training parents to support the educational growth of their children, and preparation of children for success in regular school programs;

(5) provision of special training to enable staff to develop the skills necessary to work with parents and young children in the full range of instructional services offered through this part (including child care staff in programs enrolling children of participants under this part on a space available basis);

(6) provision of and monitoring of integrated instructional services to participating parents and children through home-based programs; and

(7) coordination of programs assisted under this part with programs assisted under this chapter and any relevant programs under chapter 2 of this title, the Adult Education Act, the Individuals with Disabilities Education Act, the Job Training Partnership Act, and with the Head Start program, volunteer literacy programs, and other relevant programs.

(c) FEDERAL SHARE LIMITATION.—(1) The Federal share under this part may be—

(A) not more than 90 percent of the total cost of the program in the first year the eligible entity receives assistance under this part,

(B) 80 percent in the second such year,

(C) 70 percent in the third such year, and

(D) 60 percent in the fourth and any subsequent such year.

Funds may not be used for indirect costs. The remaining cost may be provided in cash or in kind, fairly evaluated, and may be obtained from any source other than funds made available for programs under this chapter.

(2) The Secretary (in any fiscal year in which section 1052(a) applies) or the State educational agency (in any fiscal year in which section 1052(b) applies) may waive, in whole or in part, the requirement that all or part of the remaining cost described in paragraph (1) be obtained from sources other than funds made available under this chapter if an eligible entity—

(A) demonstrates that it otherwise would not be able to participate in the program under this part; and

(B) negotiates an agreement with the Secretary or the State educational agency, as appropriate, with respect to the amount of the remaining cost to which the waiver would be applicable.

(20 U.S.C. 2744)

SEC. 1055. ELIGIBLE PARTICIPANTS.

(a) IN GENERAL.—Except as provided in subsection (b), eligible participants shall be—

(1) a parent or parents who are eligible for participation in an adult basic education program under the Adult Education Act; and

(2) the child or children (from birth to age 7, inclusive), of any individual under paragraph (1), who reside in a school attendance area designated for participation in programs under part A.

(b) CONTINUATION OF ELIGIBILITY FOR CERTAIN PARTICIPANTS.—Any family participating in the program under this part that becomes ineligible for such participation as a result of 1 or more members of the family becoming ineligible for such participation, may continue to participate in the program until all members of the family become ineligible for participation, which—

(1) in the case of a family in which ineligibility was due to the child or children of such family attaining the age of 8, shall be when the parent or parents become ineligible due to educational advancement; and

(2) in the case of a family in which ineligibility was due to the educational advancement of the parent or parents of such family, shall be when all children in the family attain the age of 8.

(20 U.S.C. 2745)

SEC. 1056. APPLICATIONS.

(a) SUBMISSION.—To be eligible to receive a grant under this part an eligible entity shall submit an application to the Secretary under section 1052(a) and to the State educational agency under section 1052(b) in such form and containing or accompanied by such information as the Secretary or the State educational agency, as the case may be, may require.

(b) REQUIRED DOCUMENTATION.—Such application shall include documentation that the eligible entity has the qualified personnel required—

(1) to develop, administer, and implement the program required by this part, and

(2) to provide special training necessary to prepare staff for the program.

(c) PLAN.—Such application shall also include a plan of operation for the program which includes—

(1) a description of the program goals;

(2) a description of the activities and services which will be provided under the program (including training and preparation of staff);

(3) a description of the population to be served and an estimate of the number of participants;

(4) if appropriate, a description of the collaborative efforts of the institutions of higher education, community-based organizations, the appropriate State educational agency, private elementary schools, or other appropriate nonprofit organizations in carrying out the program for which assistance is sought;

(5) a statement of the methods which will be used—

(A) to ensure that the programs will serve those eligible participants most in need of the activities and services provided by this part;

(B) to provide services under this part to special populations, such as individuals with limited English proficiency and individuals with handicaps; and

(C) to encourage participants to remain in the programs for a time sufficient to meet program goals; and

(6) a description of the methods by which the applicant will coordinate programs under this part with programs under chapter 1 and chapter 2, where appropriate, of this title, the Adult Education Act, the Job Training Partnership Act, and with Head Start programs, volunteer literacy programs, and other relevant programs.

(20 U.S.C. 2746)

SEC. 1057. AWARD OF GRANTS.

(a) SELECTION PROCESS.—(1) The Secretary or each State educational agency, as the case may be, shall appoint a review panel that will award grants on the basis of proposals which—

(A) are most likely to be successful in meeting the goals of this part;

(B) demonstrate that the area to be served by such program has a high percentage or a large number of children and adults who are in need of such services as indicated by high levels of poverty, illiteracy, unemployment, limited English proficiency, or other need-related indicators;

(C) demonstrate the greatest degree of cooperation and coordination between a variety of relevant service providers in all phases of the program;

(D) submit budgets which appear reasonable, given the scope of the proposal;

(E) demonstrate the eligible entity's ability to provide additional funding under section 1054(c);

(F) are representative of urban and rural regions of the State or of the United States, as the case may be; and

(G) show the greatest promise for providing models which may be transferred to other local educational agencies.

(2) The review panel shall give priority for grants under this subsection to proposals which—

(A) make the demonstration described in paragraph (1)(B); and

(B) demonstrate an ability to operate an effective program.

(b) REVIEW PANEL.—A review panel shall, to the extent practicable, consist of 7 members as follows:

(1) an early childhood education professional;

(2) an adult education professional;

(3) a representative of parent-child education organizations;

(4) a representative of community-based literacy organizations;

(5) a member of a local board of education;

(6) a representative of business and industry with a commitment to education; and

(7) an individual involved in the implementation of programs under this chapter within the State.

The panel shall contain members described in paragraphs (1), (2), (6), and (7).

(c) DISTRIBUTION OF ASSISTANCE.—(1) In approving grants under this part pursuant to section 1052(a), the Secretary shall ensure a representative distribution of assistance among the States and among urban and rural areas of the United States.

(2) In approving grants under this part pursuant to section 1052(b), the review panel shall ensure a representative distribution of assistance between urban and rural areas of the State.

(d) DURATION.—(1) Grants may be awarded for a period not to exceed 4 years. In any application from an eligible entity for a grant to continue a project for the second, third, or fourth fiscal year following the first fiscal year in which a grant was awarded to such eligible entity, the Secretary or the State educational agency, as the case may be, shall review the progress being made toward meeting the objectives of the project. The Secretary or the State educational agency, as the case may be, may refuse to award a grant if the Secretary or such agency finds that sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for a hearing.

(2) The Secretary shall establish criteria for carrying out the provisions of paragraph (1) in the transition fiscal year whenever the provisions of section 1052(b) apply to authorized State grant programs.

(20 U.S.C. 2747)

SEC. 1058. EVALUATION.

(a) INDEPENDENT ANNUAL EVALUATION.—The Secretary shall provide for the annual independent evaluation of programs under this part to determine their effectiveness in providing—

(1) services to special populations;
(2) adult education services;
(3) parent training;
(4) home-based programs involving parents and children, [1]
(5) coordination with related programs; and
(6) training of related personnel in appropriate skill areas.

(b) CRITERIA.—

(1) Each evaluation shall be conducted by individuals not directly involved in the administration of the program or project operated under this part. Such independent evaluators and the program administrators shall jointly develop evaluation criteria which provide for appropriate analysis of the factors under subsection (a). When possible, each evaluation shall include comparisons with appropriate control groups.

(2) In order to determine a program's effectiveness in achieving its stated goals, each evaluation shall contain objective measures of such goals and, whenever feasible, shall obtain the specific views of program participants about such programs.

(c) REPORT TO CONGRESS AND DISSEMINATION.—The Secretary shall prepare and submit to the Congress a review and summary of the results of such evaluations not later than September 30, 1993. The annual evaluations shall be submitted to the National Diffusion Network for consideration for possible dissemination.

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[1] So in original. The comma probably should be a semicolon.

(20 U.S.C. 2748)

SEC. 1059. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for purposes of carrying out this part such sums as may be necessary for the fiscal year 1991, $100,000,000 for the fiscal year 1992, and such sums as may be necessary for the fiscal year 1993.

(20 U.S.C. 2749)

PART C—SECONDARY SCHOOL PROGRAMS FOR BASIC SKILLS IMPROVEMENT AND DROPOUT PREVENTION AND REENTRY

SEC. 1101. PURPOSE.

It is the purpose of this subpart[1] to provide additional assistance to local educational agencies with high concentrations of low-income children, low-achieving children, or school dropouts to improve the achievement of educationally disadvantaged children enrolled in secondary schools of such agencies, and to reduce the number of youths who do not complete their elementary and secondary education.

(20 U.S.C. 2761)

SEC. 1102. ALLOCATION.

(a) RESERVATIONS.—From the amount appropriated under section 1110[2] for each of the fiscal years 1992 and 1993, the Secretary shall first reserve—

(1) an amount equal to 3 percent of such amount for programs consistent with the purpose of this part for school dropout prevention and reentry programs and secondary school basic skills improvement programs for migrant children, to be conducted through the Office of Migrant Education; and

(2) an amount equal to 5 percent of such amount for replication and technical assistance activities.

(b) STATE ALLOCATION.—Except as provided in subsection (c), each State shall be eligible to receive a grant under this part in each fiscal year that bears the same ratio to the remainder of the amount appropriated in that fiscal year as the amount allocated under section 1005 of this Act to the local educational agencies in the State bears to the total amount allocated to such agencies in all States.

(c) STATE MINIMUM.—(1) No State shall receive less than the greater of—

(A) one-quarter of 1 percent of the amount appropriated for this part and allocated under subsection (b) for any fiscal year; or

(B) $250,000.

(2)(A) No State shall, by reason of the application of the provisions of paragraph (1)(A) of this subsection, be allotted more than—

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[1] So in original. Part C has no subparts.

[2] This reference probably should be to "1111".

(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

(ii) the amount calculated under subparagraph (B),

whichever is less.

(B) For the purpose of subparagraph (A)(ii), the amount for each State equals—

(i) the number of children in such State counted for purposes of this part in the fiscal year specified in subparagraph (A),

multiplied by

(ii) 150 percent of the national average per pupil payment made with funds available under this part for that year.

(d) LOCAL EDUCATIONAL AGENCY ALLOCATION.—Each State educational agency shall allocate funds among local educational agencies in the State on the basis of—

(1) the eligibility of such agency for funds under section 1005 of this Act; and

(2) the criteria described in section 1105.

Each local educational agency may carry out the activities described in section 1103 in cooperation with community-based organizations.

(e) STATE ADMINISTRATION.—A State may reserve not more than 5 percent of the amounts available under this part for any fiscal year for State administrative costs.

(20 U.S.C. 2762)

SEC. 1103. USES OF FUNDS.

(a) GENERAL RULE.—

(1) A local educational agency may use—

(A) not to exceed 50 percent of funds paid under this part in any fiscal year for dropout prevention and reentry activities pursuant to subsection (c); and

(B) the remainder of such funds for secondary schools basic skills improvement activities pursuant to subsection (b).

(2) A community-based organization shall use all funds paid under this part in any fiscal year for dropout prevention and reentry activities pursuant to subsection (c).

(b) BASIC SKILLS FOR SECONDARY SCHOOLS.—Funds made available under this subpart may be used—

(1) to initiate or expand programs designed to meet the special educational needs of secondary school students and to help such students attain grade level proficiency in basic skills, and, as appropriate, learn more advanced skills;

(2) to develop innovative approaches for—

(A) surmounting barriers that make secondary school programs under this subpart difficult for certain students to attend and difficult for secondary schools to administer, such as scheduling problems; and

(B) courses leading to successful completion of the general education development test or of graduation requirements;

(3) to develop and implement innovative programs involving community-based organizations or the private sector, or both, to provide motivational activities, preemployment training, or transition-to-work activities;

(4) to provide programs for eligible students outside the school, with the goal of reaching school dropouts who will not reenter the traditional school, for the purpose of providing compensatory education, basic skills education, or courses for general educational development;

(5) to use the resources of the community to assist in providing services to the target population;

(6) to provide training for staff who will work with the target population on strategies and techniques for identifying, instructing, and assisting such students;

(7) to provide guidance and counseling activities, support services, exploration of postsecondary educational opportunities, youth employment activities, and other student services which are necessary to assist eligible students; and

(8) to recruit, train, and supervise secondary school students (including the provision of stipends to students in greatest need of financial assistance) to serve as tutors of other students eligible for services under this subpart and under part A, in order to assist such eligible students with homework assignments, provide instructional activities, and foster good study habits and improved achievement.

(c) USES OF FUNDS FOR SCHOOL DROPOUT PREVENTION AND REENTRY PROJECTS.—Funds made available under this subsection may be used for—

(1) effective programs which identify potential student dropouts and prevent them from dropping out of elementary and secondary school;

(2) effective programs which identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education;

(3) effective programs for early intervention designed to identify at-risk students in elementary and early secondary schools;

(4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of the children not completing their elementary and secondary education and the reasons why such children have dropped out of school;

(5) school dropout programs which include coordinated services and activities with programs of vocational education, adult basic education, and programs under the Job Training Partnership Act;

(6) projects which are carried out in consortia with a community-based organization, any nonprofit private organization, institution of higher education, State educational agency, State and local public agencies, private industry councils (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station, or community-based organization; or

(7) any of the activities described in section 6005 or 6006 of title VI.

(d) WITHIN-STATE ALLOCATION.—

(1) Each State educational agency, from funds received under this part—

(A) shall first reserve an amount equal to 5 percent of such funds for programs consistent with the purpose of this part for school dropout prevention and reentry programs conducted by community-based organizations that have demonstrated effectiveness in programs for dropout prevention and reentry activities or basic skills improvement activities; and

(B) shall then allocate funds among local educational agencies in the State on the basis of—

(i) the eligibility of such agency for funds under section 1005; and

(ii) the criteria described in section 1105.

(2) Each local educational agency may carry out the activities described in section 1103 in cooperation with community-based organizations.

(20 U.S.C. 2763)

SEC. 1104. APPLICATIONS.

(a) APPLICATION REQUIRED.—Any local educational agency or community-based organization which desires to receive a grant under this part shall submit to the State educational agency an application which describes the program to be supported with funds under this part and complies with the provisions of subsection (b).

(b) CONTENTS OF APPLICATION.—Each application submitted under subsection (a) shall—

(1) contain a plan that describes specific proposals for a program to increase the secondary school completion rate of the State by not later than January 1, 2001, by a percentage equal to one-half the difference between 100 percent and the secondary school completion rate for individuals in the State aged 18 to 35, inclusive, as of January 1, 1990;

(2) assure that requirements for obtaining a certificate of graduation from a school providing secondary education or its equivalent will not be lowered;

(3) describe the program goals and the manner in which funds will be used to initiate or expand services to secondary school students, school dropouts, and potential school dropouts;

(4) describe the activities and services which will be provided by the program (including documentation to demonstrate that the local educational agency or community-based organization has the qualified personnel required to develop, administer, and implement the program under this part);

(5) assure that the programs will be conducted in schools or areas with the greatest need for assistance, in terms of achievement levels, poverty rates, or school dropout rates;

(6) assure that the programs will serve those eligible students most in need of the activities and services provided by this part;

(7) assure that services will be provided under this part, as appropriate, to special populations, such as individuals with limited English proficiency and individuals with handicaps;

(8) assure that parents of eligible students will be involved in the development and implementation of programs under this part;

(9) describe the methods by which the applicant will coordinate programs under this part with programs for the eligible student population operated by the local educational agency concerned or community-based organizations, as appropriate, social service organizations and agencies, private sector entities, and other agencies, organizations, and institutions, and with programs conducted under the Carl D. Perkins Vocational Education Act, the Adult Education Act, the Job Training Partnership Act, and other relevant Acts;

(10) assure that, if feasible, the local educational agency or community-based organization will enter into arrangements with local businesses, labor organizations, or chambers of commerce under which such businesses and organizations will help secure employment for graduates of schools operating projects under this part;

(11) assure that to the extent consistent with the number of students in the school district of the local educational agency concerned who are enrolled in private secondary schools, such agency or community-based organization shall, after timely and meaningful consultation with appropriate private school officials, make provision for including such services and arrangements for the benefit of such students as will assure their equitable participation in the purposes and benefits of this part; and

(12) provide such other information as the State educational agency may require to determine the nature and quality of the proposed project and the applicant's ability to carry it out.

(c) SPECIAL RULE.—If the Secretary determines that a local educational agency has substantially failed to comply with paragraph (9) (by reason of State law or otherwise) or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirement, and, subject to the provisions of section 1017(b) of part A of this chapter, shall arrange for the provision of services to such students.

(d) TIME FOR SUBMISSION OF APPLICATIONS.—Each State shall submit to the Secretary—

(1) an initial application that covers a 3-year period by not later than January 1, 1992;

(2) an initial or a renewal application that covers a 3-year period by not later than January 1, 1995; and

(3) a renewal application that covers a 3-year period by not later than January 1, 1998.

(20 U.S.C. 2764)

SEC. 1105. AWARD OF GRANTS.

(a) General Authority.—Each State educational agency shall award grants to local educational agencies and community-based organizations within the State which—

(1) demonstrate the greatest need for services provided under this part based on their numbers of low-income children, numbers of low-achieving children, or numbers of school dropouts;

(2) are representative of urban and rural regions of the State;

(3) offer innovative approaches to improving achievement among eligible youth or offer approaches which show promise for replication and dissemination; and

(4) offer innovative approaches to reducing the number of school dropouts.

(b) Priorities for Grants to Community-Based Organizations.—

(1) The State educational agency shall give priority for grants from amounts reserved under section 1103(d)(1)(A) to community-based organizations that intend to use funds under the grant to establish or operate model secondary school community education employment centers to meet the education needs of inner-city, low-income youths or rural youths by awarding grants to eligible recipients to establish community education employment centers to provide students with the education, skills, support services, and enrichment necessary to ensure—

(A) graduation from secondary school;

(B) successful transition from articulated vocational and academic programs to a broad range of post secondary institutions;

(C) employment, including military service; and

(D) integration into America's economic mainstream.

(2) Each center that is assisted with a grant under this part shall offer—

(A) a comprehensive program of confidential guidance counseling;

(B) professional staff members who demonstrate the highest academic, teaching, guidance, or administrative standards, as appropriate; and

(C) active and informed parental and community participation.

(20 U.S.C. 2765)

SEC. 1106. REPORTS; DEVELOPMENT OF INFORMATION BASE.

(a) Reports to States.—Each local educational agency or individual school that receives assistance under a grant made under this part shall annually submit a report to the State describing activities carried out with such assistance and progress toward increasing the secondary school completion rate achieved as a result of such activities.

(b) Reports to Secretary.—Each State shall annually submit a report to the Secretary describing activities carried out with assistance received under this section and progress achieved toward increasing the secondary school completion rate as a result of such activities.

(c) DEVELOPMENT OF INFORMATION BASE.—From information contained in the reports required under subsection (b), the Secretary shall create an information base containing information on dropout prevention programs for use by State and local educational agencies, elementary and secondary schools, and interested community organizations in the development or refinement of dropout prevention programs. The Secretary shall ensure that such information base is easily accessible to such agencies, schools, and organizations.

(20 U.S.C. 2765a)

SEC. 1107. COORDINATION AND DISSEMINATION.

(a) GRANTS TO REGIONAL LABORATORIES.—From an amount equal to 65 percent of the amount reserved under section 1102(a)(2), the Secretary shall make grants to regional laboratories supported by the Secretary under section 405(d)(4)(A)(i) of the General Education Provisions Act for the purposes of—

(1) identifying model programs for dropout prevention and reentry in their regions;

(2) disseminating such programs; and

(3) providing assistance to schools in replicating such programs.

(b) ACTIVITIES OF THE NATIONAL DIFFUSION NETWORK.—The Secretary shall provide an amount equal to 45 percent of the amount reserved under section 1102(a)(2) to the National Diffusion Network established under section 1562 for the purpose of replicating model programs for dropout prevention and reentry.

(20 U.S.C. 2765b)

SEC. 1108. FISCAL REQUIREMENTS AND COORDINATION PROVISIONS.

(a) GENERAL RULE.—(1) The provisions of subsections (a) through (d) of section 1018 of this Act shall apply to the program authorized by this part.

(2) ADMINISTRATIVE COSTS.—Not more than 5 percent of a grant may be used for local administrative costs.

(3) COORDINATION AND DISSEMINATION.—Local educational agencies and community-based organizations receiving grants under this part shall cooperate with the coordination and dissemination efforts of the National Diffusion Network and State educational agencies.

(b) SPECIAL RULE.—(1) Each local educational agency shall use funds under this part to supplement the level of funds under this chapter that are used for secondary school programs.

(2) In order to comply with paragraph (1), any local educational agency which operates secondary school programs funded under chapter 1 of the Education Consolidation and Improvement Act of 1981 or part A of this Act and which is operating secondary school basic skills programs under this part shall continue the same aggregate level of funding for such programs, at the same schools or at other eligible schools within the local educational agency.

(20 U.S.C. 2766)

SEC. 1109. EVALUATION.

The provisions of sections 1019 and 1021 shall apply to local educational agencies receiving grants under this part.

(20 U.S.C. 2767)

SEC. 1110. DEFINITION OF SECONDARY SCHOOL COMPLETION RATE.

The Secretary shall establish a definition for the term "secondary school completion rate" for purposes of this part.

(20 U.S.C. 2767a)

SEC. 1111. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $400,000,000 for the fiscal year 1990, $450,000,000 for the fiscal year 1991, $500,000,000 for the fiscal year 1992, and $550,000,000 for the fiscal year 1993 to carry out this part.

(20 U.S.C. 2768)

PART D—PROGRAMS OPERATED BY STATE AGENCIES

Subpart 1—Programs for Migratory Children

SEC. 1201. GRANTS—ENTITLEMENT AND AMOUNT.

(a) ENTITLEMENT.—A State educational agency or a combination of such agencies shall, upon application, be entitled to receive a grant for any fiscal year under this part to establish or improve, either directly or through local educational agencies, programs of education for migratory children of migratory agricultural workers (including migratory agricultural dairy workers) or of migratory fishermen which meet the requirements of section 1202.

(b) AMOUNT OF GRANT.—(1) Except as provided in section 1291, the total grants which shall be made available for use in any State (other than the Commonwealth of Puerto Rico) for this subpart shall be an amount equal to 40 percent of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, of 80 percent of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, of 120 percent of the average per pupil expenditure in the United States) multiplied by (i) the estimated number of such migratory children aged 3 to 21, inclusive, who reside in the State full time, and (ii) the full-time equivalent of the estimated number of such migratory children aged 3 to 21, inclusive, who reside in the State part time, as determined by the Secretary in accordance with regulations, except that if, in the case of any State, such amount exceeds the amount required under section 1202, the Secretary shall allocate such excess, to the extent necessary, to other States, whose total of grants under this sentence would otherwise be insufficient for all such children to be served in such other States. In determining the full-time equivalent number of migratory children who are in a State during the summer months, the Secretary shall adjust the number so determined to take into account the special needs of those children for summer programs and the additional costs of operating such programs during the summer. In determining the number of migrant children for the purposes of this section the Secretary shall use statistics made available by the migrant student record transfer system or such other system as the Secretary may determine most accurately and fully reflects the actual number of migrant students. In submitting the information required to make such determination, the States may not exceed a standard error rate of 5 percent.

(2) To carry out the determinations of eligibility required by this section, the Secretary shall develop a national standard form for certification of migrant students.

(3) For each fiscal year, the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. The grant which the Commonwealth of Puerto Rico shall be eligible to receive under this section for a fiscal year shall be the amount arrived at by multiplying the number of such migrant children in the Commonwealth of Puerto Rico by the product of—

(A) the percentage determined under the preceding sentence, and

(B) 32 percent of the average per pupil expenditure in the United States.

(20 U.S.C. 2781)

SEC. 1202. PROGRAM REQUIREMENTS.

(a) REQUIREMENTS FOR APPROVAL OF APPLICATION.—The Secretary may approve an application submitted under section 1201(a) only upon a determination—

(1) that payments will be used for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of migratory children of migratory agricultural workers (including migratory agricultural dairy workers) or of migratory fishermen, and to coordinate such programs and projects with similar programs and projects in other States, including the transmittal of pertinent information with respect to school records of such children;

(2) that in planning and carrying out programs and projects there has been and will be appropriate coordination with programs administered under section 418 of the Higher Education Act, section 402 of the Job Training Partnership Act, the Individuals with Disabilites Education Act, the Community Services Block Grant Act, the Head Start program, the migrant health program, and all other appropriate programs under the Departments of Education, Labor, and Agriculture;

(3) that such programs and projects will be administered and carried out in a manner consistent with the basic objectives of section 1011 (other than subsection (b)), sections 1012, 1014, and 1018, and subpart 2 of part F;

(4) that, in the planning and operation of programs and projects at both the State and local educational agency level, there is appropriate consultation with parent advisory councils

(established in order to comply with this provision) for programs extending for the duration of a school year, and that all programs are carried out in a manner consistent with the requirements of section 1016;

(5) that, in planning and carrying out programs and projects, there has been adequate assurance that provision will be made for the preschool education needs of migratory children of migratory agricultural workers (including migratory agricultural dairy workers) or of migratory fishermen; and

(6) that programs conducted under this subpart will be evaluated in terms of their effectiveness in achieving stated goals, including objective measurements of educational achievement in basic skills, and that for formerly migratory children who have been served under this subpart in a full school year program for at least 2 years, such evaluations shall include a determination of whether improved performance is sustained for more than 1 year.

(b) CONTINUATION OF MIGRANT STATUS.—For purposes of this subpart, with the concurrence of the parents, a migratory child of a migratory agricultural worker (including migratory agricultural dairy workers) or of a migratory fisherman shall be considered to continue to be such a child for a period, not in excess of 5 years. Such children who are currently migrant, as determined pursuant to regulations of the Secretary, shall be given priority in the consideration of programs and activities contained in applications submitted under this section.

(c) DEFINITIONS.—The Secretary shall continue to use the definitions of "agricultural activity", "currently migratory child", and "fishing activity" which were published in the Federal Register on April 30, 1985, in regulations prescribed under section 555(b) of the Education Consolidation and Improvement Act of 1981 and subpart 1 of part B of title I of the Elementary and Secondary Education Act of 1965 (as in effect on April 30, 1985). No additional definition of "migratory agricultural worker" or "migratory fisherman" may be applied to the provisions of this subpart.

(d) BYPASS PROVISION.—If the Secretary determines that a State is unable or unwilling to conduct educational programs for migratory children of migratory agricultural workers (including migratory agricultural dairy workers) or of migratory fishermen, that it would result in more efficient and economic administration, or that it would add substantially to the welfare or educational attainment of such children, the Secretary may make special arrangements with other public or nonprofit private agencies to carry out the purposes of this section in 1 or more States, and for this purpose the Secretary may use all or part of the total of grants available for any such State under this subpart.

(20 U.S.C. 2782)

SEC. 1203. COORDINATION OF MIGRANT EDUCATION ACTIVITIES.

(a) ACTIVITIES AUTHORIZED.—(1) The Secretary is authorized to make grants to, and enter into contracts with, State educational agencies (in consultation with and with the approval of the States) for activities to improve the interstate and intrastate coordination among State and local educational agencies of the educational programs available for migratory students. Each grant issued under this paragraph shall not exceed 3 years for its stated purpose.

(2)(A) The Secretary is also authorized to enter into contracts with State educational agencies to operate a system for the transfer among State and local educational agencies of migrant student records (including individualized education programs approved under the Individuals with Disabilites Education Act).

(B) Except as provided in subparagraph (C), for the purpose of ensuring continuity in the operation of such system, the Secretary shall, not later than July 1 of each year, continue to award such contract to the State educational agency receiving the award in the preceding year, unless a majority of the States notify the Secretary in writing that such agency has substantially failed to perform its responsibilities under the contract during that preceding year.

(C) Beginning on July 1, 1992, and every 4 years thereafter, the Secretary shall conduct a competition to award such contract.

(D) No activity under this section shall, for purposes of any Federal law, be treated as an information collection that is conducted or sponsored by a Federal agency.

(3) Grants or contracts shall also be made under this section to State educational agencies to develop and establish a national program of credit exchange and accrual for migrant students so that such students will be better able to meet graduation requirements and receive their high school diplomas. Such grants or contracts may not exceed 3 years.

(b) AVAILABILITY OF FUNDS.—The Secretary shall, from the funds appropriated for carrying out this subpart, reserve for purposes of this section for any fiscal year an amount, determined by the Secretary, which shall not be less than $6,000,000 nor more than 5 percent of the amount appropriated.

(20 U.S.C. 2783)

Subpart 2—Programs for Handicapped Children

SEC. 1221. AMOUNT AND ELIGIBILITY.

(a) ELIGIBILITY FOR GRANT.—(1) A State educational agency shall be eligible to receive a grant under this subpart for any fiscal year for programs (as defined in sections 1222 and 1223) for handicapped children (as defined in paragraph (2)(B)).

(2) For the purpose of this subpart—

(A) "children" includes infants and toddlers described in part H of the Individuals with Disabilites Education Act, as appropriate, and

(B) "handicapped children" means children who by reason of their handicap require special education and related services, or in the case of infants and toddlers, require early intervention services and who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities.

(b) STATE EDUCATIONAL AGENCY APPLICATION.—In order to receive a grant under this subpart, a State educational agency shall submit an application to the Secretary which provides assurances that—

(1) all handicapped children (other than handicapped infants and toddlers) in the State participating in programs and projects funded under this subpart receive a free appropriate public education and such children and such children's parents are provided all the rights and procedural safeguards under part B of the Individuals with Disabilites Education Act and this subpart and that all handicapped infants and toddlers in the State participating under this subpart receive early intervention services and such infants and toddlers and their families are provided the rights and procedural safeguards under part H of such Act;

(2) programs and projects receiving assistance under this subpart are administered in a manner consistent with this subpart, subpart 2 of part F, part B of the Individuals with Disabilites Education Act, and as determined by the Secretary to be appropriate, part H of the Individuals with Disabilites Education Act, including the monitoring by such agency of compliance under paragraph (1);

(3) programs and projects under this subpart will be coordinated with services under the Individuals with Disabilites Education Act;

(4) for fiscal year 1991, and each subsequent fiscal year, the State educational agency will administer the program authorized by this subpart through the State office responsible for administering part B of the Individuals with Disabilites Education Act;

(5) the agency will report annually to the Secretary—

(A) the number of children served under this subpart for each disability and age category as described in part B of the Individuals with Disabilites Education Act;

(B) the number of children served under this subpart in each of the educational placements described in section 618(b)(2) of the Individuals with Disabilites Education Act (and will report separately State-operated and State-supported programs and local educational agency programs for children previously served in such State programs); and

(C) on the uses of funds and the allocation of such funds for such uses under this subpart; and

(6) the agency will report to the Secretary such other information as the Secretary may reasonably request.

(c) AMOUNT OF GRANT.—(1) Except as provided in subsection (e) and section 1291, the grant which a State educational agency (other than the agency for Puerto Rico) shall be eligible to receive under this section shall be an amount equal to 40 percent of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, of 80 percent of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, of 120 percent of the average per pupil expenditure in the United States), multiplied by the number of handicapped children, from birth through 21, enrolled on December 1, as determined by the Secretary, in programs or schools for handicapped infants, toddlers and children operated or supported by a State agency which—

(i) is directly responsible for providing free public education for handicapped children (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with such agency); or

(ii) is directly responsible for providing early intervention services for handicapped infants or toddlers (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with such agency),

in the most recent fiscal year for which satisfactory data are available. The State educational agency shall distribute such funds to the appropriate State agency on the basis of the December 1 child count by distributing an equal amount for each child counted.

(2) For each fiscal year, the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. Except as provided in subsection (e), a grant which the Commonwealth of Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of such handicapped children in the Commonwealth of Puerto Rico by the product of—

(A) the percentage determined under the preceding sentence, and

(B) 32 percent of the average per pupil expenditure in the United States.

(3) SPECIAL RULE.—Notwithstanding any other provision of law, for purposes of determining the amount of a grant under this subsection for which a State educational agency is eligible from funds appropriated for the program assisted under this subpart for each fiscal year beginning after October 1, 1990, the Secretary shall allow intermediate school districts to count children with disabilities in the same manner as such children were counted in determining such amount in fiscal year 1990, regardless of whether such children receive services directly from the intermediate school district.

(d) COUNTING OF CHILDREN TRANSFERRING FROM STATE TO LOCAL PROGRAMS.—In any case in which a child described in sections 1225(1)(A) and 1225(1)(B)(i) leaves an educational program for handicapped children operated or supported by a State agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (c) if—

(1) the child was receiving and continues to receive a free appropriate public education; and

(2) the State educational agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State educational

agency under this section which are attributable to such child, to be used for the purpose set forth in section 1223.

(e) SPECIAL REQUIREMENT.—The State educational agency may count handicapped children aged 3 to 5, inclusive, in a State only if such State is eligible for a grant under section 619 of the Individuals with Disabilites Education Act.

(20 U.S.C. 2791)

SEC. 1222. PROGRAM REQUIREMENTS.

(a) GENERAL REQUIREMENTS.—A State educational agency shall use the payments made under this subpart for programs and projects (including the acquisition of equipment) which are designed to supplement the special education needs of handicapped children (other than handicapped infants and toddlers) or the early intervention needs of handicapped infants and toddlers. Such programs and projects shall be administered in a manner consistent with this subpart, subpart 2 of part F, part B of the Individuals with Disabilites Education Act, and, as determined by the Secretary to be appropriate, part H of the Individuals with Disabilites Education Act.

(b) SERVICES.—Funds under this subpart shall be used to supplement the provision of special education and related services for handicapped children (other than handicapped infants and toddlers) or early intervention services for handicapped infants and toddlers.

(c) DEMONSTRATION OF BENEFIT.—Recipients of funds under this subpart shall collect and maintain such evaluations and assessments as may be necessary to demonstrate that the programs and projects were beneficial to the children served.

(20 U.S.C. 2792)

SEC. 1223. USES OF FUNDS.

(a) GENERAL RULE.—Programs,[1] and projects authorized under this subpart may include, but are not limited to—

(1) services provided in early intervention, preschool, elementary, secondary, and transition programs;

(2) acquisition of equipment and instructional materials;

(3) employment of special personnel;

(4) training and employment of education aides;

(5) training in the use and provision of assistive devices and other specialized equipment;

(6) training of teachers and other personnel;

(7) training of parents of handicapped children;

(8) training of nonhandicapped children to facilitate their participation with handicapped children in joint activities;

(9) training of employers and independent living personnel involved in assisting the transition of handicapped children from school to the world of work and independent living;

(10) outreach activities to identify and involve handicapped children and their families more fully in a wide range of educational and recreational activities in their communities; and

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[1] So in original. The comma probably should not appear.

(11) planning for, evaluation of, and dissemination of information regarding such programs and projects assisted under this subpart.

(b) PROHIBITION.—Programs and projects authorized under this subpart may not include the construction of facilities.

(20 U.S.C. 2793)

SEC. 1224. SERVICE AND PROGRAM APPLICATIONS.

(a) APPLICATION REQUIRED.—A State agency or local educational agency may receive a grant under this subpart for any fiscal year if it has on file with the State educational agency an application which describes the services, programs, and projects to be conducted with such assistance for a period of not more than 3 years, and each such application has been approved by the State educational agency. Any State educational agency operating programs or projects under this subpart shall prepare a written description of such programs and projects in accordance with subsections (b) and (c).

(b) REQUIREMENTS.—At a minimum each such application shall—

(1) indicate the number of children to be served;

(2) specify the number of children to be served for each disability and age category as described in part B of the Individuals with Disabilites Education Act;

(3) describe the purpose or purposes of the project and the method or methods of evaluating the effectiveness of the services, projects, or program;

(4) specify the services to be provided with the funds furnished under this subpart; and

(5) include other information the Secretary or State educational agency may request.

(c) APPLICATION ASSURANCES.—Any such application shall provide assurances that—

(1) all handicapped children in the State (other than handicapped infants and toddlers) participating in programs and projects funded under this subpart receive a free appropriate public education and such children and such children's parents are provided all the rights and procedural safeguards under part B of the Individuals with Disabilites Education Act and this subpart and that all handicapped infants and toddlers in the State participating under this subpart receive early intervention services and such infants and toddlers and their families are provided the rights and procedural safeguards under part H of such Act;

(2) services, programs, and projects conducted under this subpart are of sufficient size, scope, and quality to give reasonable promise toward meeting the special educational and early intervention needs of children to be served;

(3) funds made available under the[1] subpart will supplement, not supplant State and local funds in accordance with section 1018(b);

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[1] So in original. Probably should be "this".

(4) the agency will maintain its fiscal effort in accordance with section 1018(a);

(5) the agency will conduct such evaluations and assessments as may be necessary to demonstrate that the programs and projects are beneficial to the children served;

(6) the parents of children to be served with funds under this subpart are provided an opportunity to participate in the development of its project application; and

(7) the agency will comply with all reporting requirements in a timely manner.

(d) LETTER OF REQUEST.—The State educational agency may accept, in lieu of a project application, a letter of request for payment from a local educational agency, if the local agency intends to serve fewer than 5 children with its payment. In such a letter the agency shall include an assurance that the payment will be used to supplement the provision of special education and related services.

(20 U.S.C. 2794)

SEC. 1225. ELIGIBLE CHILDREN.

The children eligible for services under this subpart are—

(1) those handicapped children from birth to 21, inclusive, who—

(A) the State is directly responsible for providing special education or early intervention services to (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with such agency), and

(B)(i) are participating in a State-operated or State-supported school or program for handicapped children (including schools and programs operated under contract or other arrangement with a State agency), or

(ii) previously participated in such a program and are receiving special education or early intervention services from local educational agencies; and

(2) other handicapped children, if children described in paragraph (1) have been fully served.

(20 U.S.C. 2795)

SEC. 1226. FEDERAL MONITORING REQUIREMENT.

Whenever the Secretary conducts monitoring visits under part B of the Individuals with Disabilites Education Act, the Secretary shall monitor the program authorized by this subpart, if applicable.

(20 U.S.C. 2796)

Subpart 3—Programs for Neglected and Delinquent Children

SEC. 1241. AMOUNT AND ENTITLEMENT.

(a) ENTITLEMENT TO GRANTS.—A State agency which is responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions shall be entitled to receive a grant under this subpart for any fiscal year (but only if grants received under this subpart are used only for children in such institutions).

(b) AMOUNT OF GRANT.—(1) Except as provided in section 1291, the grant which such an agency (other than the agency for Puerto Rico) shall be eligible to receive shall be an amount equal to 40 percent of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, of 80 percent of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, of 120 percent of the average per pupil expenditure in the United States) multiplied by the number of such neglected or delinquent children in average daily attendance, as determined by the Secretary, at schools for such children operated or supported by that agency, including schools providing education for such children under contract or other arrangement with such agency, in the most recent fiscal year for which satisfactory data are available.

(2) For each fiscal year, the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. The grant which the Commonwealth of Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of such neglected or delinquent children in the Commonwealth of Puerto Rico by the product of—

(A) the percentage determined under the preceding sentence, and

(B) 32 percent of the average per pupil expenditure in the United States.

(20 U.S.C. 2801)

SEC. 1242. PROGRAM REQUIREMENTS.

(a) USE OF PAYMENTS.—A State agency shall use payments under this subpart only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of children in institutions for neglected or delinquent children, children attending community day programs for neglected and delinquent children, or children in adult correctional institutions. Such programs and projects shall be designed to support educational services supplemental to the basic education of such children which must be provided by the State, and such programs and projects shall be administered and carried out in a manner consistent with subpart 2 of part F and sections 1011(a), 1014, and section[1] 1018 (other than subsection (c)). The transfer of neglected and delinquent student records among State and local educational agencies, institutions, and programs shall include any individualized education programs of such students.

(b) COMPLIANCE.—In determining whether programs under this subpart have complied with the supplement not supplant requirement under section 1018(b), programs which are supplementary in terms of the number of hours of instruction students are receiving from State and local sources shall be considered in compliance without regard to the subject areas in which those instructional hours are given.

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[1] So in original. The word "section" probably should not appear.

(c) THREE-YEAR PROJECTS.—Where a State agency operates programs under this subpart in which children are likely to participate for more than 1 year, the State educational agency may approve the application for a grant under this subpart for a period of more than 1 year, but not to exceed 3 years.

(d) EVALUATION.—Programs for neglected and delinquent children under this subpart shall be evaluated annually to determine their impact on the ability of such children to maintain and improve educational achievement, to maintain school credit in compliance with State requirements, and to make the transition to a regular program or special education program operated by a local educational agency.

(20 U.S.C. 2802)

SEC. 1243. TRANSITION SERVICES.

(a) TRANSITION SERVICES.—Each State may reserve not more than 10 percent of the amount it receives under section 1241 for any fiscal year to support projects that facilitate the transition of children from State operated institutions for neglected and delinquent children into locally operated programs.

(b) CONDUCT OF PROJECTS.—Projects supported under this section may be conducted directly by the State agency, or by contracts or other arrangements with one or more local educational agencies, other public agencies, or private nonprofit organizations.

(c) LIMITATION.—Assistance under this section shall be used only to provide special educational services to neglected and delinquent children in schools other than State operated institutions.

(20 U.S.C. 2803)

SEC. 1244. DEFINITIONS.

For the purposes of this subpart, the following terms have the following meanings:

(1) The term "institution for delinquent children", as determined by the State educational agency, means a public or private residential facility that is operated for the care of children who have been determined to be delinquent or in need of supervision.

(2) The term "institution for neglected children" means, as determined by the State educational agency, a public or private residential facility (other than a foster home) that is operated for the care of children who have been committed to the institution or voluntarily placed in the institution under applicable State law, due to abandonment, neglect, or death of parents or guardians.

(20 U.S.C. 2804)

Subpart 4—General Provisions for State Operated Programs

SEC. 1291. RESERVATION OF FUNDS FOR TERRITORIES.

There is authorized to be appropriated for each fiscal year for purposes of each of subparts 1, 2, and 3 of this part, an amount equal to not more than 1 percent of the amount appropriated for such year for such subparts, for payments to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands under each such subpart. The amounts appropriated for each such subpart shall be allotted among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for such grants, based on such criteria as the Secretary determines will best carry out the purposes of this chapter.

(20 U.S.C. 2811)

SEC. 1292. DUAL ELIGIBILITY FOR PROGRAMS.

Neglected and delinquent children under subpart 3 who are eligible for programs for handicapped children under subpart 2, may be counted under each subpart for purposes of grant determination and may be served under each such program.

(20 U.S.C. 2812)

PART E—PAYMENTS

SEC. 1401. PAYMENT METHODS.

The Secretary shall, from time to time, pay to each State, in advance or otherwise, the amount which it and the local educational agencies of that State are eligible to receive under this chapter. Such payments shall take into account the extent (if any) to which any previous payment to such State educational agency under this chapter or chapter 1 of the Education Consolidation and Improvement Act of 1981 (whether or not in the same fiscal year) was greater or less than the amount which should have been paid to it.

(20 U.S.C. 2821)

SEC. 1402. AMOUNT OF PAYMENTS TO LOCAL EDUCATIONAL AGENCIES.

From the funds paid to it pursuant to section 1401 each State educational agency shall distribute to each local educational agency of the State which is eligible to receive a grant under this chapter and which has submitted an application approved pursuant to section 1012 the amount for which such application has been approved, and the amount which the local educational agency is eligible to receive under sections 1053 and 1102 except that the amount shall not exceed the amount determined for that local educational agency under this chapter.

(20 U.S.C. 2822)

SEC. 1403. ADJUSTMENTS WHERE NECESSITATED BY APPROPRIATIONS.

(a) ADJUSTMENT ALLOCATION.—If the sums appropriated for any fiscal year for making the payments provided for in this chapter are not sufficient to pay in full the total amounts which all local and State educational agencies are entitled to receive under this chapter for such year, the amount available for each grant to a State agency eligible for a grant under subpart 1, 2, or 3 of part D shall be equal to the total amount of the grant as computed under each such subpart. If the remainder of such sums available after the application of the preceding sentence is not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under subpart 1 of part A of this chapter for such year, the allocations to such agencies shall, subject to section 1006(c) and to adjustments under the next sentence, be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated. The allocation of a local educational agency which would be reduced under the preceding sentence to less than 85 percent of its allocation under subpart 1 of the[1] part A for the preceding fiscal year, shall be increased to such amount, the total of the increases thereby required being derived by proportionately reducing the allocations of the remaining local educational agencies, under the preceding sentence, but with such adjustments as may be necessary to prevent the allocation to any remaining local educational agency from being thereby reduced to less than 85 percent of its allocation for such year.

(b) ADDITIONAL FUNDS ALLOCATION.—(1) If additional funds become available for making payments under this chapter for that year, allocations that were reduced pursuant to subsection (a) shall be increased on the same basis as they were reduced.

(2) In order to permit the most effective use of all appropriations made to carry out this chapter, the Secretary may set dates by which (A) State educational agencies must certify to the Secretary the amounts for which the applications of educational agencies have been or will be approved by the State, and (B) State educational agencies referred to in subpart 1 of part D must file applications. If the maximum grant a local educational agency would receive (after any ratable reduction which may have been required under the first sentence of subsection (a) of this section) is more than an amount which the State educational agency determines, in accordance with regulations prescribed by the Secretary, such agency will use, the excess amount shall be made available first to educational agencies in that State. Determinations of the educational agencies to which such excess amounts shall be made available by the State educational agency in furtherance of the purposes of this chapter shall be in accordance with criteria prescribed by the Secretary which are designed to assure that such excess amounts will be made available to other eligible educational agencies with the greatest need, for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the provisions of section 1005(a) as a result of such factors as population shifts and changing economic circumstances. In the event excess amounts remain after carrying out the preceding 2 sentences of this section, such excess amounts shall be distributed among the other States as the Secretary shall prescribe for use by local educational agencies in such States for the

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[1] So in original. The word "the" probably should not appear.

purposes of this chapter in such manner as the respective State educational agencies shall prescribe.

(20 U.S.C. 2823)

SEC. 1404. PAYMENTS FOR STATE ADMINISTRATION.

(a) IN GENERAL.—The Secretary is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this chapter (other than section 1021), except that the total of such payments in any fiscal year shall be the greater of the following:

(1) 1 percent of the amount allocated to the State and its local educational agencies and to other State agencies as determined for that year under parts A and D; or

(2) $325,000, or $50,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(b) LIMITATION ON INDIRECT COSTS.—Not more than 15 percent of the State administrative allocation under subsection (a) may be used for indirect costs of the grant.

(20 U.S.C. 2824)

SEC. 1405. FUNDS FOR THE IMPLEMENTATION OF SCHOOL IMPROVEMENT PROGRAMS.

(a) GENERAL AUTHORITY.—The Secretary is authorized to pay, for the purpose of carrying out program improvement plans described in section 1021, to each State an amount equal to—

(1)(A) 0.25 percent of the amount allocated to the State and its local educational agencies as determined under parts A and D for fiscal years 1989, 1990, and 1991; and

(B) 0.5 percent of the amount allocated to the State and its local educational agencies as determined under parts A and D for fiscal years 1992 and 1993; or

(2)(A) $90,000 or $15,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands for fiscal years 1989, 1990, and 1991; and

(B) $180,000 or $30,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands for fiscal years 1992 and 1993.

(b) LIMITATIONS.—(1) No funds made available to States under subsection (a) may be used for administrative functions related to any provisions of this chapter.

(2) Funds made available to States under this section shall only be used for direct educational services in schools implementing program improvement plans as described under section 1021.

(3) Parents of participating children, school staff, the local educational agency and the State educational agency shall jointly agree to the selection of providers of technical assistance and the best use of funds available under subsection (a) for the effective implementation of the program improvement plan. Uses of such funds include assistance from—

(A) an institution of higher education;

(B) federally supported educational laboratory or center;

(C) State personnel with expertise in educational improvement;

(D) locally, State, or nationally based consultants; and

(E) other possible providers of the specific services required by the school's program plan.

(20 U.S.C. 2825)

SEC. 1406. LIMITATION ON GRANT TO THE COMMONWEALTH OF PUERTO RICO.

Notwithstanding the provisions of this chapter, the amount paid to the Commonwealth of Puerto Rico under this chapter for any fiscal year shall not exceed 150 percent of the amount received by the Commonwealth of Puerto Rico under chapter 1 of the Education Consolidation and Improvement Act[1] or under this chapter in the preceding fiscal year. Any excess over such amount shall be used to ratably increase the allocations under subpart 1 of part A of the other local educational agencies whose allocations do not exceed the maximum amount for which the agencies are eligible under section 1005.

(20 U.S.C. 2826)

PART F—GENERAL PROVISIONS

Subpart 1—Federal Administration

SEC. 1431. FEDERAL REGULATIONS.

(a) IN GENERAL.—The Secretary is authorized to issue such regulations as are considered necessary to reasonably ensure that there is compliance with the specific requirements and assurances required by this chapter.

(b) PROCEDURE.—(1) Prior to publishing proposed regulations pursuant to this chapter, the Secretary shall convene regional meetings which shall provide input to the Secretary on the content of proposed regulations. Such meetings shall include representatives of Federal, State, and local administrators, parents, teachers, and members of local boards of education involved with implementation of programs under this chapter.

(2) Subsequent to regional meetings and prior to publishing proposed regulations in the Federal Register, the Secretary shall prepare draft regulations and submit regulations on a minimum of 4 key issues to a modified negotiated rulemaking process as a demonstration of such process. The modified process shall waive application of the Federal Advisory Committee Act, but shall otherwise follow the guidance provided in the Administrative Conference of the United States in Recommendation 82–4, "Procedures for Negotiating Proposed Regulations" (47 Fed. Reg. 30708, June 18, 1982) and any successor regulation. Participants in the demonstration shall be chosen by the Secretary from among participants in the regional meetings, representing the groups described in paragraph (1) and all geographic regions. The demonstration shall be conducted in a timely manner in order that final regulations may be issued by the Secretary within the 240-day period required by section 431(g) of the General Education Provisions Act.

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[1] So in original. Probably should be "Act of 1981".

(3) In an emergency situation in which regulations pursuant to this chapter must be issued within a very limited time to assist State and local educational agencies with the operation of the program, the Secretary may issue a regulation without such prior consultation, but shall immediately thereafter convene regional meetings to review the emergency regulation prior to issuance in final form.

(c) SPECIAL RULE.—Funds made available under sections 1437 and 1463 of this chapter shall be released for expenditure by the Secretary only at such time as final regulations pertaining to this chapter are published in the Federal Register.

(d) LIMITATION.—Programs under this chapter may not be required to follow any 1 instructional model, such as the provision of services outside the regular classroom or school program.

(20 U.S.C. 2831)

SEC. 1432. AVAILABILITY OF APPROPRIATIONS.

(a) GENERAL PROVISION.—Notwithstanding any other provision of law, unless expressly in limitation of this section, funds appropriated in any fiscal year to carry out activities under this chapter shall become available for obligation on July 1 of such fiscal year and shall remain available for obligation until the end of the subsequent fiscal year.

(b) CARRYOVER AND WAIVER.—Notwithstanding section 412 of the General Education Provisions Act, subsection (a) or any other provision of law—

(1) not more than 25 percent of funds appropriated for fiscal year 1989 and 15 percent of funds appropriated for fiscal year 1990 and each subsequent year may remain available for obligation for 1 additional year;

(2) a State educational agency may grant a 1-time waiver of the percentage limitation under paragraph (1) if the agency determines that the request by a local educational agency is reasonable and necessary or may grant a waiver in any fiscal year in which supplemental appropriations for this chapter become available for obligation; and

(3) the percentage limitation under paragraph (1) shall not apply with respect to any local educational agency which receives less than $50,000 under this chapter for any fiscal year.

(20 U.S.C. 2832)

SEC. 1433. WITHHOLDING OF PAYMENTS.

(a) WITHHOLDING.—Whenever the Secretary, after reasonable notice to any State educational agency and an opportunity for a hearing on the record, finds that there has been a failure to comply substantially with any assurances required to be given or conditions required to be met under this chapter, the Secretary shall notify such agency of these findings and that beginning 60 days after the date of such notification, further payments will not be made to the State under this chapter, or affected part or subpart thereof (or, in the Secretarys discretion, that the State educational agency shall reduce or terminate further payments under the affected part or subpart thereof, to specified local educational agencies or State agencies affected by the failure) until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, (1) no further payments shall be made to the State under the part or subpart thereof, or (2) payments by the State educational agency under the part or subpart thereof shall be limited to local educational agencies and State agencies not affected by the failure, or (3) payments to particular local educational agencies shall be reduced, as the case may be.

(b) NOTICE TO PUBLIC.—Upon submission to a State of a notice under subsection (a) that the Secretary is withholding payments, the Secretary shall take such action as may be necessary to bring the withholding of payments to the attention of the public within the State.

(20 U.S.C. 2833)

SEC. 1434. JUDICIAL REVIEW.

(a) FILING APPEALS.—If any State is dissatisfied with the Secretary's action under section 1433(a), such State may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall act to suspend any withholding of funds by the Secretary pending the judgment of the court and prior to a final action on any review of such judgment. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

(b) BASIS OF REVIEW.—For the purposes of this chapter, the basis of review shall be as provided in section 458(c) of the General Education Provisions Act.

(c) JUDICIAL APPEALS.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari of certification as provided in section 1254 of title 28, United States Code.

(20 U.S.C. 2834)

SEC. 1435. EVALUATION.

(a) NATIONAL STANDARDS.—In consultation with State and local educational agencies (including members of State and local boards of education and parent representatives), the Secretary shall develop national standards for local evaluation of programs under this chapter. In developing such standards, the Secretary may use the Title I Evaluation and Reporting System designed and implemented under title I of this Act, as in effect prior to the date of the enactment of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 as the model. The Secretary shall provide advance notification to State and local educational agencies of the requirements of such national standards of evaluations.

(b) REPORTS.—The Secretary shall submit a comprehensive and detailed report concerning State and local evaluation results based on data collected under sections 1019, 1107, 1202(a)(6), and 1242(d) to the appropriate committees of the Congress on a biennial basis.

(20 U.S.C. 2835)

SEC. 1436. COORDINATION OF FEDERAL, STATE, AND LOCAL ADMINISTRATION.

(a) POLICY MANUAL.—The Secretary shall, not later than 6 months after the publication of final regulations with respect to this chapter, prepare and distribute to State educational agencies, State agencies operating programs under part D, and local educational agencies, and shall make available to parents and other interested individuals, organizations, and agencies, a policy manual for this chapter to—

(1) assist such agencies in (A) preparing applications for program funds under this chapter, (B) meeting the applicable program requirements under this chapter, and (C) enhancing the quality, increasing the depth, or broadening the scope of activities for programs under this chapter;

(2) assist State educational agencies in achieving proper and efficient administration of programs funded under this chapter;

(3) assist parents to become involved in the planning for, and implementation and evaluation of, programs and projects under this chapter; and

(4) ensure that officers and employees of the Department of Education, including officers and employees of the Secretary and officers and employees of such Department charged with auditing programs carried on under this chapter, uniformly interpret, apply, and enforce requirements under this chapter throughout the United States.

(b) CONTENTS OF POLICY MANUAL.—The policy manual shall, with respect to programs carried out under this chapter, contain descriptions, statements, procedural and substantive rules, opinions, policy statements and interpretations and indices to and amendments of the foregoing, and in particular, whether or not such items are required under section 552 of title 5, United States Code to be published or made available. The manual shall include (but not be limited to)—

(1) a statement of the requirements applicable to the programs carried out under this chapter, including such requirements contained in this chapter, the General Education Provisions Act, other applicable statutes, and regulations issued under the authority of such statutes;

(2) an explanation of the purpose of each requirement and its interrelationship with other applicable requirements;

(3) a statement of the procedures to be followed by the Secretary with respect to proper and efficient performance of administrative responsibilities;

(4) summaries of (A) advisory opinions interpreting and applying applicable requirements, and (B) final audit determinations relevant to programs under this chapter, including examples of actual applications of the legal requirements of applicable statutes and regulations;

(5) model forms and instructions developed by the Secretary for use by State and local educational agencies, at their discretion, including, but not limited to, application forms, ap-

plication review checklists, and instruments for monitoring programs under this chapter;

(6) summaries of appropriate court decisions concerning programs under this chapter; and

(7) model forms, policies, and procedures developed by State educational agencies.

(c) RESPONSE TO INQUIRIES.—The Secretary shall respond with written guidance not more than 90 days after any written request (return receipt requested) from a State or local educational agency regarding a policy, question, or interpretation under this chapter. In the case of a request from a local educational agency, such agency must first have addressed its request to the State educational agency.

(d) TECHNICAL ASSISTANCE.—From funds available to the Secretary for studies, evaluations, and technical assistance, the Secretary shall continue, establish, and expand technical assistance centers to provide assistance to State and local educational agencies with respect to programs under this chapter. In providing such assistance, centers shall place particular emphasis on information relating to program improvement, parental involvement, instruction, testing and evaluation, and curriculum under this chapter. Such centers shall be accessible through electronic means.

(e) FEDERAL DISSEMINATION OF EXEMPLARY PROGRAMS.—To the extent possible, the Secretary shall provide information to State and local educational agencies regarding opportunities for dissemination of exemplary programs under this chapter through the National Diffusion Network. The Secretary shall emphasize programs which are exemplary in their implementation of the parent involvement provisions of section 1016. The Secretary shall coordinate Federal exemplary project identification activities with the National Diffusion Network.

(f) FEDERAL REVIEW OF STATE AND LOCAL ADMINISTRATION.—The Secretary shall provide for a review of State and local administration of programs under this chapter. In addition to such other areas as the Secretary may consider appropriate, the review shall consider State policies, guidance materials, monitoring and enforcement activities, and the detection and resolution of problems of local noncompliance.

(20 U.S.C. 2836)

SEC. 1437. AUTHORIZATION OF APPROPRIATIONS FOR EVALUATION AND TECHNICAL ASSISTANCE.

There are authorized to be appropriated for the purposes of sections 1435 and 1436 for other Federal evaluation, technical assistance, and research activities related to this chapter, and authorized studies under this chapter, $4,000,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 through 1993.

(20 U.S.C. 2837)

SEC. 1438. APPLICATION OF GENERAL EDUCATION PROVISIONS ACT.

(a) GENERAL RULE.—Except as otherwise specifically provided by this section, the General Education Provisions Act shall apply to the programs authorized by this chapter.

(b) SUPERCESSION RULE.—The following provisions of the General Education Provisions Act shall be superseded by the specified provisions of this chapter with respect to the programs authorized by this subtitle [1]:

(1) Section 408(a)(1) of the General Education Provisions Act is superseded by section 1431 of this chapter.

(2) Section 426(a) of such Act is superseded by section 1437 of this chapter.

(3) Section 427 of such Act is superseded by section 1016 of this chapter.

(4) Section 430 of such Act is superseded by sections 1012, 1056, 1104(b), 1125, 1202(a), and 1224 of this chapter.

(5) Section 455 of such Act is superseded by section 1433 of this chapter.

(6) Section 458 of such Act is superseded by section 1434 of this chapter with respect to judicial review of withholding of payments.

(c) EXCLUSION RULE.—Sections 434, 435, and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, shall not apply to the programs authorized by this chapter and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this chapter.

(20 U.S.C. 2838)

SEC. 1439. NATIONAL COMMISSION ON MIGRANT EDUCATION.

(a) ESTABLISHMENT.—There is established, as an independent agency within the executive branch, a National Commission on Migrant Education (referred to in this section as the "Commission").

(b) MEMBERSHIP.—

(1) The Commission shall be composed of 12 members. Four of the members shall be appointed by the President. Four of the members shall be appointed by the Speaker of the House, including 2 Members of the House, 1 from each political party. Four of the members shall be appointed by the President pro tempore of the Senate, including 2 Members of the Senate, 1 from each political party.

(2) The chairman shall be designated by the President from among the members appointed by the President. If the President has not appointed 4 members of the Commission and designated a chairman within 60 days of the enactment of this Act, the members of the Commission appointed by the Speaker of the House and the President pro tempore of the Senate shall elect a chairman who shall continue to serve for the duration of the Commission.

(3) Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(c) STUDY.—The Commission shall make a study of the following issues:

(1) What are the demographics of the children of migratory workers today compared with 10 years ago and how are the demographics expected to change over the next decade.

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[1] So in original. Public Law 89–10 (this Act) contains no subtitles.

(2) What are the individual roles of the Federal, State, and private sectors in migrant affairs; how has each sector enhanced migrant educational opportunities, including entry into all types of postsecondary education programs; and should Federal programs include incentives for private and State participation.

(3) What is the number of unserved or underserved migrant students who are eligible for the programs under this chapter nationwide and on a State-by-State basis.

(4) How can migrant education, migrant health, migrant Head Start, Job Training Partnership programs serving migrants, HEP/CAMP, and adult literacy programs be integrated and coordinated at both the Federal and State levels.

(5) How many migrant students are identified as potential drop-outs; how might this issue be addressed at the national policy level; and what effect does the migrant mother have on her children's performance.

(6) How do the migrant programs under this chapter vary from State to State; how do their administrative costs vary; how do parent involvement and services vary.

(7) What role has the Migrant Student Record Transfer System performed in assisting the migrant population; to what degree is it utilized for enhancing the education program at the local level and by the classroom teacher; is it cost effective; and how well would such a system adapt to other mobile populations like those in the inner cities or those in the Department of Defense overseas schools.

(8) How many prekindergarten programs are available to migratory children; what services are they provided; what is the degree of parent involvement with these programs; what is a typical profile of a student in such a program.

(9) How well are migrant handicapped and gifted and talented students identified and served; and what improvements might be made in this area.

(10) How many of the students being served are identified as "currently migrant" and how many are "formerly migrant"; what differences are there in their needs; and how do services provided differ between those of "currently migrant" and those of "formerly migrant".

(11) How does interstate and intrastate coordination occur at the State and local levels.

(12) Is there a need to establish a National Center for Migrant Affairs and what are the options for funding such a Center.

(d) REPORTS.—

(1) The Commission shall prepare and submit reports and recommendations to the President and to the appropriate committees of the Congress on the studies required to be conducted under this section. The reports for the studies required shall be submitted as soon as practicable.

(2) Any recommendations and reports submitted under this paragraph which contemplate changes in Federal legislation shall include draft legislation to accomplish the recommendations.

(e) SPECIAL STUDY ON THE MIGRANT STUDENT RECORDS TRANSFER SYSTEM.—(1) The Commission shall conduct a study of the function and the effectiveness of the Migrant Student Records Transfer System.

(2) The Commission shall prepare and submit to the Secretary of Education and to the Congress, not later than 2 years after the first meeting of the Commission, a report on the study required by paragraph (1).

(f) COMPENSATION.—

(1) Members of the Commission who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(2) Members of the Commission who are not officers or full-time employees of the United States may each receive $150 per diem when engaged in the actual performance of duties vested in the Commission. In addition, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(f)[1] STAFF.—Such personnel as the Commission deems necessary may be appointed by the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subtitle III of chapter 53 of such title relating to classification and General Schedule pay rates, but no individual so appointed shall be paid in excess of the rate authorized for GS–18 of the General Schedule.

(g)[2] ADMINISTRATION.—

(1) The Commission or, on the authorization of the Commission, any committee thereof, may, for the purpose of carrying out the provisions of this section, hold such hearings and sit and act at such times and such places within the United States as the Commission or such committee may deem advisable.

(2) In carrying out its duties under this section, the Commission shall consult with other Federal agencies, representatives of State and local governments, and private organizations to the extent feasible.

(3) The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality, information, suggestions, estimates, and statistics for the purpose of this section, and each such department, bureau, agency, board, commission, office, establishment, or instrumentality is authorized and directed, to the extent permitted by law, to furnish

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[1] So in original. Probably should be redesignated as "(g)".
[2] So in original. Probably should be redesignated as "(h)".

such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman.[3]

(4) For the purpose of securing the necessary data and information, the Commission may enter into contracts with universities, research institutions, foundations, and other competent public or private agencies. For such purpose, the Commission is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

(5) The heads of all Federal agencies are, to the extent not prohibited by law, directed to cooperate with the Commission in carrying out this section.

(6) The Commission is authorized to utilize, with their consent, the services, personnel, information, and facilities of other Federal, State, local, and private agencies with or without reimbursement.

(7) The Commission shall have authority to accept in the name of the United States, grants, gifts, or bequests of money for immediate disbursement in furtherance of the functions of the Commission. Such grants, gifts, or bequests, after acceptance by the Commission, shall be paid by the donor or the donor's representative to the Treasurer of the United States whose receipts shall be their acquittance. The Treasurer of the United States shall enter them in a special account to the credit of the Commission for the purposes in each case specified.

(8) Six members of the Commission shall constitute a quorum, but a lesser number of 2 or more may conduct hearings.

(h)[1] TERMINATION.—The Commission shall terminate 3 years after the date of its first meeting.

(i)[2] AUTHORIZATION OF APPROPRIATIONS.—Effective October 1, 1988, there is authorized to be appropriated $2,000,000 to carry out the provisions of this section, which shall remain available until expended or until the termination of the Commission, whichever occurs first.

(20 U.S.C. 2839)

Subpart 2—State Administration

SEC. 1451. STATE REGULATIONS.

(a) IN GENERAL.—(1) Except as provided in paragraph (2), nothing in this chapter may be interpreted to preempt, prohibit, or encourage State regulations issued pursuant to State law which are not inconsistent with the provisions of this chapter, regulations promulgated under this chapter, or other applicable Federal statutes and regulations.

(2) State rules or policies may not limit local school districts' decisions regarding the grade levels to be served; the basic skills areas (such as reading, mathematics, or language arts) to be addressed; instructional settings, materials or teaching techniques to be used; instructional staff to be employed (as long as such staff meet State certification and licensing requirements for education

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[3] So in original. Probably should not be capitalized.

[1] So in original. Probably should be redesignated as "(i)".

[2] So in original. Probably should be redesignated as "(j)".

personnel); or other essential support services (such as counseling and other pupil personnel services) to be provided as part of the programs authorized under this chapter.

(3) Nothing in this subsection may be construed to inhibit the State educational agency's responsibility to work jointly with local educational agencies and other State agencies receiving funds under this chapter in program improvement activities pursuant to section 1021 where the State may suggest various activities and approaches as it works with such agencies to develop program improvement plans.

(b) REVIEW BY COMMITTEE OF PRACTITIONERS.—Before publication of any proposed or final State rule or regulation pursuant to this chapter, each such rule shall be reviewed by a State committee of practitioners which shall include administrators, teachers, parents, and members of local boards of education, and on which a majority of the members shall be local educational agency representatives. In an emergency situation where such regulation must be issued within a very limited time to assist local educational agencies with the operation of the program, the State educational agency may issue a regulation without such prior consultation, but shall immediately thereafter convene a State committee of practitioners to review the emergency regulation prior to issuance in final form.

(c) IDENTIFICATION AS STATE REQUIREMENT.—The imposition of any State rule or policy relating to the administration and operation of programs funded by this chapter (including those based on State interpretation of any Federal law, regulation, or guideline) shall be identified as a State imposed requirement.

(20 U.S.C. 2851)

SEC. 1452. RECORDS AND INFORMATION.

Each State educational agency shall keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this chapter).

(20 U.S.C. 2852)

SEC. 1453. ASSIGNMENT OF PERSONNEL.

(a) LIMITATIONS.—Public school personnel paid entirely by funds made available under this chapter may be assigned limited supervisory duties which are assigned to similarly situated personnel who are not paid with such funds, and such duties need not be limited to classroom instruction or to the benefit of children participating in programs or projects funded under this chapter. The time spent by public school personnel on duties described in the preceding sentence may not exceed either—

(1) the same proportion of total work time as prevails with respect to similarly situated personnel at the same school site, or

(2) one period per day,

whichever is less.

(b) USE IN STATE PROGRAMS.—If a State carries out a program as defined under section 1018(d), the State may use funds under this chapter to pay salaries of personnel assigned to both the State program and the program under this chapter for administration, training, and technical assistance, if the State educational agency maintains time distribution records reflecting the actual amount of time spent by each such employee signed by that employee's supervisor, and costs are charged on a prorated basis to both programs.

(20 U.S.C. 2853)

SEC. 1454. PROHIBITION REGARDING STATE AID.

No State shall take into consideration payments under this chapter in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.

(20 U.S.C. 2854)

Subpart 3—Rural Educational Opportunities

SEC. 1456. PROGRAM AUTHORIZED.

(a) GENERAL AUTHORITY.—The Secretary shall make grants to, or enter into contracts with, institutions of higher education, private nonprofit agencies and organizations, regional educational laboratories, technical assistance centers established pursuant to section 1436(d), public agencies, State education[1] agencies, or combinations of such agencies or institutions within particular regions of the United States, to pay all or part of the cost of operating at least 10 rural assistance programs. The Secretary may not make a grant to, or enter into a contract with, any agency, institution, organization, or combination thereof under the preceding sentence unless such agency, institution, organization, or combination thereof has extensive experience providing educational assistance to State and local educational agencies.

(b) FUNCTIONS OF REGIONAL RURAL ASSISTANCE PROGRAMS.—Each regional rural assistance program established under subsection (a) shall provide technical assistance, consultation, training, and such other assistance as will assist State educational agencies and local educational agencies in the region to improve the quality of the education provided to educationally disadvantaged children participating in programs under this chapter who reside in rural areas or attend small schools. Each such program shall give special consideration to, and report on, problems related to districts with declining enrollments and ways in which districts can combine management to provide effective programs.

(20 U.S.C. 2861)

SEC. 1457. APPLICATION PRIORITY REQUIREMENTS.

(a) In carrying out this subpart, the Secretary shall give priority to applicants which describe assistance to school districts in local educational agencies in rural areas—

(1) with the highest concentrations of children from low-income families;

(2) that have a significant number or percentage of schools serving children from low-income families; and

(3) in which there are a significant number of schools in which evaluations indicate lack of substantial progress toward meeting desired outcomes, no improvement, or a decline in ag-

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[1] So in original. Probably should be "educational".

gregate performance by the children participating in programs under this chapter.

(b) Applicants shall consult with State educational agencies and local educational agencies in the application process.

(20 U.S.C. 2862)

SEC. 1458. COORDINATION, DISSEMINATION, AND REPORT.

(a) COORDINATION.—Each program established under this subpart shall—

(1) coordinate its activities with technical assistance centers established under section 1436(d),

(2) coordinate its activities with the activities of local educational agencies and State educational agencies under section 1021, and

(3) assist in identifying successful programs and practices for dissemination through existing dissemination networks and efforts.

(b) DISSEMINATION AND REPORT.—(1) Each rural assistance program shall be accessible through electronic means.

(2) Regional rural assistance programs shall submit a report to the Secretary every 2 years containing such reasonable information about its activities as the Secretary may request, but including at a minimum information on efforts to provide effective services under this chapter in rural school districts facing declining enrollments, with particular attention to issues inherent in consolidating, jointly administering, or otherwise combining the resources of 2 or more districts.

(20 U.S.C. 2863)

SEC. 1459. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $10,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993.

(20 U.S.C. 2864)

Subpart 4—Studies

SEC. 1461. REPORT ON STATE AND LOCAL EVALUATIONS.

The Secretary shall submit a comprehensive and detailed report concerning State and local evaluation results based on data collected under sections 1019, 1107(a)[1], 1202(a)(6), and 1242(d) to the appropriate committees of the Congress on a biennial basis.

(20 U.S.C. 2881)

SEC. 1462. NATIONAL STUDY ON EFFECT OF PROGRAMS ON CHILDREN.

(a) NATIONAL LONGITUDINAL STUDY.—The Secretary shall contract with a qualified organization or agency to conduct a national longitudinal study of eligible children participating in programs under this chapter. The study shall assess the impact of participation by such children in chapter 1 programs until they are 18 years of age. The study shall compare educational achievement of those children with significant participation in chapter 1 programs and comparable children who did not receive chapter 1 services. Such study shall consider the correlations between participation in programs under this chapter and academic achievement, delinquency rates, truancy, school dropout rates, employment and earnings, and enrollment in postsecondary education. The study shall be conducted throughout the country in urban, rural, and suburban areas and shall be of sufficient size and scope to assess and evaluate the effect of the program in all regions of the Nation.

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[1] So in original. This cross reference probably should be to 1109.

(b) FOLLOW-UP.—The agency or organization with which the Secretary has entered a contract under subsection (a) shall conduct a follow-up of the initial survey which shall include a periodic update on the participation and achievement of a representative group of children who participated in the initial study. Such follow-up shall evaluate the effects of participation until such children are 25 years of age.

(c) REPORT.—A final report summarizing the findings of the study shall be submitted to the appropriate committees of the Congress not later than January 1, 1997; an interim report shall be so submitted not later than January 1, 1993.

(20 U.S.C. 2882)

SEC. 1463. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $4,000,000 for the fiscal year 1989, $4,200,000 for the fiscal year 1990, $4,400,000 for the fiscal year 1991, $4,700,000 for the fiscal year 1992, and $5,000,000 for the fiscal year 1993 for carrying out sections 1461 and 1462.

(20 U.S.C. 2883)

Subpart 5—Definitions

SEC. 1471. DEFINITIONS.

Except as otherwise provided, for purposes of this Act:

(1) The term "average daily attendance" means attendance determined in accordance with State law, except that notwithstanding any other provision of this chapter, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this chapter the attendance of such child at such school shall be held and considered (A) to be in attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (B) not to be in attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

(2) The term "average per pupil expenditure" means in the case of a State or the United States, the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available), of all local educational agencies in the State, or in the United States (which for the purposes of this

subsection[1] means the 50 States, and the District of Columbia), as the case may be, plus any direct current expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

(3) The term "community-based organization" means a private nonprofit organization which is representative of a community or significant segments of a community and which provides educational or related services to individuals in the community.

(4) The term "construction" includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

(5) The term "county" means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

(6) The term "current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance, and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under this chapter, chapter 2 of this title, or chapter 1 or 2 of the Education Consolidation and Improvement Act of 1981.

(7) The term "effective schools programs" means school-based programs that may encompass preschool through secondary school levels and that have the objective of (A) promoting school-level planning, instructional improvement, and staff development, (B) increasing the academic achievement levels of all children and, particularly, educationally deprived children, and (C) achieving as ongoing conditions in the school the following factors identified through effective school research as distinguishing effective from ineffective schools—

(i) strong and effective administrative and instructional leadership that creates consensus on instructional goals and organizational capacity for instructional problem solving;

(ii) emphasis on the acquisition of basic and higher order skills;

(iii) a safe and orderly school environment that allows teachers and pupils to focus their energies on academic achievement;

(iv) a climate of expectations that all children can learn under appropriate conditions; and

(v) continuous assessment of students and programs to evaluate the effects of instruction.

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[1] So in original. Probably should be "section".

(8) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(9) The term "equipment" includes machinery, utilities, and building equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

(10) The term "institution of higher education" has the meaning given that term in section 1201(a) of the Higher Education Act of 1965.

(11) The term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade 12.

(12) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(13) The term "more advanced skills" means skills including reasoning, analysis, interpretation, problem-solving, and decisionmaking as they relate to the particular subjects in which instruction is provided under programs supported by this chapter.

(14) The term "parent" includes a legal guardian or other person standing in loco parentis.

(15) The term "parent advisory council" means a body composed primarily of members who are parents of children served by the programs or projects assisted under this chapter and who are elected by such parents, in order to advise the State or local educational agency in the planning, implementation, and evaluation of programs under this chapter.

(16) The term "project area" means a school attendance area having a high concentration of children from low-income families which, without regard to the locality of the project itself, is designated as an area from which children are to be selected to participate in a program or project assisted under this chapter.

(17) The terms "pupil services personnel" and "pupil services" mean school counselors, school social workers, school psychologists, and other qualified professional personnel involved in providing assessment, diagnosis, counseling, educational,

therapeutic, and other necessary services as part of a comprehensive program to meet student needs, and the services provided by such individuals.

(18) The term "school attendance area" means in relation to a particular school, the geographical area in which the children who are normally served by that school reside.

(19) The term "school facilities" means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

(20) The term "Secretary" means the United States Secretary of Education.

(21) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(22) The term "State" means a State, the Commonwealth of Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(23) The term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

(20 U.S.C. 2891)

Subpart 6—Miscellaneous Provisions

SEC. 1491. TRANSITION PROVISIONS.

(a) REGULATIONS.—All orders, determinations, rules, regulations, permits, grants, and contracts, which have been issued by the Secretary under chapter 1 of the Education Consolidation and Improvement Act of 1981 and title I of this Act (as in effect on the date before the effective date of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988), or which are issued under such Acts on or before the effective date of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 shall continue in effect until modified or revoked by the Secretary, by a court of competent jurisdiction, or by operation of law.

(b) EFFECT ON PENDING PROCEEDINGS.—The provisions of this chapter shall not affect administrative or judicial proceedings pending on the effective date of this section under chapter 1 of the Education Consolidation and Improvement Act of 1981 or this title.

(c) TRANSITION.—With respect to the period beginning on July 1, 1988, and ending June 30, 1989, no recipient of funds under this chapter, or chapter 2 of this title, or under chapter 1 or 2 of the Education Consolidation and Improvement Act of 1981 shall be held to have expended such funds in violation of the requirements of this Act or of such Act if such funds are expended either in accordance with this Act or such Act.

(20 U.S.C. 2901)

CHAPTER 2—FEDERAL, STATE, AND LOCAL PARTNERSHIP FOR EDUCATIONAL IMPROVEMENT

SEC. 1501. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) chapter 2 of the Education Consolidation and Improvement Act of 1981 has been successful in achieving the goals of increasing local flexibility, reducing administrative burden, providing services for private school students, encouraging innovation, and contributing to the improvement of elementary and secondary educational programs;

(2) State and local governments have placed a new focus on education;

(3) school effectiveness can be increased through effective schools programs to improve student achievement, student behavior, teaching, learning, and school management; and

(4) teachers make a significant and positive contribution to the education of our Nation's students, and local educational agencies are encouraged to recognize this contribution.

(b) STATEMENT OF PURPOSE.—It is the purpose of programs under this chapter—

(1) to provide the initial funding to enable State and local educational agencies to implement promising educational programs that can be supported by State and local sources of funding after such programs are demonstrated to be effective;

(2) to provide a continuing source of innovation, educational improvement, and support for library and instructional materials;

(3) to meet the special educational needs of at risk and high cost students, as described in section 1531(b);

(4) to enhance the quality of teaching and learning through initiating and expanding effective schools programs; and

(5) to allow State and local educational agencies to meet their educational needs and priorities for targeted assistance described in section 1531.

(c) STATE AND LOCAL RESPONSIBILITY.—The basic responsibility for the administration of funds made available under this chapter is in the State educational agencies, but it is the intent of Congress that this responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under this chapter will be mainly that of local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel, because they have the most direct contact with students and are most directly responsible to parents and because they are the most likely to be able to design programs to meet the educational needs of students in their own districts.

(20 U.S.C. 2911)

SEC. 1502. AUTHORIZATION OF APPROPRIATIONS; DURATION OF ASSISTANCE.

(a) AUTHORIZATION.—There are authorized to be appropriated $580,000,000 for the fiscal year 1989, $610,000,000 for the fiscal year 1990, $640,000,000 for the fiscal year 1991, $672,000,000 for the fiscal year 1992, and $706,000,000 for the fiscal year 1993, to carry out the provisions of this chapter.

(b) DURATION OF ASSISTANCE.—During the period beginning October 1, 1988, and ending September 30, 1993, the Secretary shall, in accordance with the provisions of this chapter, make payments to State educational agencies for the purpose of this chapter.

(20 U.S.C. 2912)

PART A—STATE AND LOCAL PROGRAMS

Subpart 1—General Provisions

SEC. 1511. ALLOTMENT TO STATES.

(a) RESERVATIONS.—(1) From the sums appropriated to carry out this chapter in any fiscal year, the Secretary shall reserve not to exceed 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs.

(2) The Secretary shall reserve an additional amount, not to exceed 6 percent of the sums appropriated in each fiscal year, to carry out the provisions of part B.

(b) ALLOTMENT.—From the remainder of such sums the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the school-age population of the State bears to the school-age population of all States, except that no State shall receive less than an amount equal to one-half of 1 percent of such remainder.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "school-age population" means the population aged 5 through 17.

(2) The term "States" includes the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(20 U.S.C. 2921)

SEC. 1512. ALLOCATION TO LOCAL EDUCATIONAL AGENCIES.

(a) DISTRIBUTION RULE.—From the sum made available each year under section 1511, the State educational agency shall distribute not less than 80 percent to local educational agencies within such State according to the relative enrollments in public and private, nonprofit schools within the school districts of such agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to local educational agencies which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as—

(1) children living in areas with high concentrations of low-income families,

(2) children from low-income families, and

(3) children living in sparsely populated areas.

(b) CALCULATION OF ENROLLMENTS.—(1) The calculation of relative enrollments under subsection (a) shall be on the basis of the total of—

(A) the number of children enrolled in public schools, and

(B) the number of children enrolled in private nonprofit schools that desire that their children participate in programs or projects assisted under this chapter,

for the fiscal year preceding the fiscal year in which the determination is made. Nothing in this subsection shall diminish the responsibility of local educational agencies to contact, on an annual basis, appropriate officials from private nonprofit schools within the areas served by such agencies in order to determine whether such schools desire that their children participate in programs assisted under this chapter.

(2)(A) Relative enrollments under subsection (a) shall be adjusted, in accordance with criteria approved by the Secretary under subparagraph (B), to provide higher per pupil allocations only to local educational agencies which serve the greatest numbers or percentages of—

(i) children living in areas with high concentrations of low-income families,

(ii) children from low-income families, or

(iii) children living in sparsely populated areas.

(B) The Secretary shall review criteria submitted by a State educational agency for adjusting allocations under paragraph (1) and shall approve such criteria only if the Secretary determines that such criteria are reasonably calculated to produce an adjusted allocation that reflects the relative needs within the State's local educational agencies based on the factors set forth in subparagraph (A).

(c) PAYMENT OF ALLOCATIONS.—

(1) From the funds paid to it pursuant to section 1511 for a fiscal year, a State educational agency shall distribute to each eligible local educational agency which has submitted an application as required in section 1533 the amount of its allocation as determined under subsection (a).

(2)(A) Additional funds resulting from higher per pupil allocations provided to a local educational agency on the basis of adjusted enrollments of children described in subsection (a), may, at the discretion of the local educational agency, be allocated for expenditures to provide services for children enrolled in public and private nonprofit schools in direct proportion to the number of children described in subsection (a) and enrolled in such schools within the local educational agency.

(B) In any fiscal year, any local educational agency that elects to allocate such additional funds in the manner described in subparagraph (A) shall allocate all additional funds to schools within the local educational agency in such manner.

(C) The provisions of subparagraphs (A) and (B) may not be construed to require any school to limit the use of such additional funds to the provision of services to specific students or categories of students.

(20 U.S.C. 2922)

Subpart 2—State Programs

SEC. 1521. STATE USES OF FUNDS.

(a) AUTHORIZED ACTIVITIES.—A State educational agency may use funds reserved for State use under this chapter only for—

(1) State administration of programs under this chapter including—

(A) supervision of the allocation of funds to local educational agencies;

(B) planning, supervision, and processing of State funds;

(C) monitoring and evaluation of programs and activities under this part; and

(D) operations of the State advisory committee;

(2) technical assistance and direct grants to local educational agencies and statewide activities which assist local educational agencies to provide targeted assistance as provided in section 1531; and

(3) assistance to local educational agencies and statewide activities to carry out effective schools programs under subpart 4.

(b) LIMITATIONS AND REQUIREMENTS.—

(1) Not more than 25 percent of funds available for State programs under this part in any fiscal year may be used for State administration under subsection (a)(1).

(2)(A) At least 20 percent of funds available for State programs under this part in any fiscal year shall be used for effective schools programs under subsection (a)(3).

(B) If a State is spending from non-Federal sources an amount equal to twice as much as the State is required to use for the purposes of subsection (a)(3), the Secretary may waive the requirement of subparagraph (A). In deciding whether or not to grant such a waiver, the Secretary shall use the definition of effective schools contained in section 1471(18).

(20 U.S.C. 2931)

SEC. 1522. STATE APPLICATIONS.

(a) APPLICATION REQUIREMENTS.—Any State which desires to receive grants under this chapter shall submit to the Secretary an application which—

(1) designates the State educational agency as the State agency responsible for the administration and supervision of programs assisted under this chapter;

(2) provides for a process of active and continuing consultation with the State educational agency of an advisory committee, appointed by the Governor and determined by the Governor to be broadly representative of the educational interests and the general public in the State, including individuals representative of—

(A) public and private elementary and secondary schoolchildren;

(B) classroom teachers;

(C) parents of elementary and secondary schoolchildren;

(D) local boards of education;

(E) local and regional school administrators (including principals, superintendents, and administrators of intermediate educational units);

(F) institutions of higher education;

(G) the State legislature;

(H) elementary and secondary school librarians; and

(I) school counselors and other pupil services personnel,

to advise the State educational agency on the allocation among targeted programs in accordance with section 1531 (not to exceed 20 percent of the amount of the State's allotment) reserved for State use under section 1512(a), on the formula for the allocation of funds to local educational agencies, and on the planning, development, support, implementation, and evaluation of State programs assisted under this chapter;

(3)(A) sets forth planned allocation of funds reserved for State use under section 1512(a) among the targeted assistance programs described in section 1531 and describes programs, projects, and activities which are designed to carry out such targeted assistance, together with the reasons for the selection of such programs, projects, and activities; and

(B) sets forth the allocation of such funds required to implement section 1572;

(4) describes how funds reserved under section 1521(b)(2) will be used to carry out subpart 4;

(5) provides for timely public notice and public dissemination of the information provided pursuant to paragraphs (2) and (3);

(6)(A) provides for an annual submission of data on the use of funds, the types of services furnished, and the students served under this chapter;

(B) in fiscal year 1992, provides for an evaluation of the effectiveness of programs assisted under this chapter, which shall include comments of the advisory committee, and shall be made available to the public;

(7) provides that the State educational agency will keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this chapter);

(8) provides assurance that, apart from technical and advisory assistance and monitoring compliance with this chapter, the State educational agency has not exercised and will not exercise any influence in the decisionmaking processes of local educational agencies as to the expenditures made pursuant to an application under section 1531;

(9) provides the following information: (A) how the State will adjust its formula to comply with section 1512(b)(2), (B) how children under section 1512(b)(2)(A) are defined, (C) the basis on which a determination of the local educational agencies under section 1512(b)(2)(A) is made, and (D) the percentage of the State grant which is proposed to be allotted on an adjusted basis under section 1512; and

(10) contains assurances that there is compliance with the specific requirements of this chapter.

(b) PERIOD OF APPLICATION.—An application filed by the State under subsection (a) shall be for a period not to exceed 3 years, and may be amended annually as may be necessary to reflect changes without filing a new application.

(c) AUDIT RULE.—Notwithstanding section 1745 of the Omnibus Budget Reconciliation Act of 1981, local educational agencies receiving less than an average $5,000 each year under this chapter need not be audited more frequently than once every 5 years.

(20 U.S.C. 2932)

Subpart 3—Local Targeted Assistance Programs

SEC. 1531. TARGETED USE OF FUNDS.

(a) GENERAL RULE.—Funds allocated for use under this chapter shall be used by State and local educational agencies for targeted assistance described in subsection (b).

(b) TARGETED ASSISTANCE.—The targeted assistance programs referred to in subsection (a) are—

(1) programs to meet the educational needs of students at risk of failure in school and of dropping out and students for whom providing an education entails higher than average costs;

(2) programs for the acquisition and use of instructional and educational materials, including library books, reference materials, computer software and hardware for instructional use, and other curricular materials that would be used to improve the quality of instruction;

(3) innovative programs designed to carry out schoolwide improvements, including the effective schools program;

(4) programs of training and professional development to enhance the knowledge and skills of educational personnel, including teachers, librarians, school counselors and other pupil services personnel, and administrators and school board members;

(5) programs of training to enhance the ability of teachers and school counselors to identify, particularly in the early grades, students with reading and reading-related problems that place such students at risk for illiteracy in their adult years;

(6) programs designed to enhance personal excellence of students and student achievement, including instruction in ethics, performing and creative arts, humanities, activities in physical fitness and comprehensive health education, and participation in community service projects; and

(7) other innovative projects which would enhance the educational program and climate of the school, including programs for gifted and talented students, technology education programs, early childhood education programs, community education and programs for youth suicide prevention.

(20 U.S.C. 2941)

SEC. 1532. AUTHORIZED ACTIVITIES.

(a) In General.—Activities authorized under this subpart may include the planning, development, or operation and expansion of programs, projects, and activities which are designed to carry out the targeted assistance described in section 1531. Such activities may include—

(1) training of educational personnel in any of the targeted assistance programs described;

(2) guidance and counseling services; and

(3) any other education or related activities which the State or local educational agency determines will contribute to improving the programs described in section 1531.

(b) Administrative Authority.—In order to conduct the activities authorized by this part, each State or local educational agency may use funds reserved for this part to make grants to and to enter into contracts with local educational agencies, institutions of higher education, libraries, museums, and other public and private nonprofit agencies, organizations, and institutions.

(20 U.S.C. 2942)

SEC. 1533. LOCAL APPLICATIONS.

(a) Contents of Application.—A local educational agency or consortia of local educational agencies may receive an allocation of funds under this chapter for any year for which an application is submitted to the State educational agency and such application is certified to meet the requirements of this section. The State educational agency shall certify any such application if such application—

(1)(A) sets forth the planned allocation of funds among targeted assistance programs described in section 1531 of this chapter and describes the programs, projects, and activities designed to carry out such targeted assistance which it intends to support, together with the reasons for the selection of such programs, projects, and activities; and

(B) sets forth the allocation of such funds required to implement section 1572;

(2) describes how assistance under this chapter will contribute to the goals of the program of improving student achievement or improving the quality of education for students;

(3) provides assurances of compliance with provisions of this chapter including the participation of children enrolled in private, nonprofit schools in accordance with section 1572;

(4) agrees to keep such records, and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation, consistent with the responsibilities of the State agency under this chapter; and

(5) provides, in the allocation of funds for the assistance authorized by this chapter, and in the design, planning, and implementation of such programs, for systematic consultation with parents of children attending elementary and secondary schools in the area served by the local agency, with teachers and administrative personnel in such schools, and with other

groups involved in the implementation of this chapter (such as librarians, school counselors, and other pupil services personnel) as may be considered appropriate by the local educational agency.

(b) PERIOD OF APPLICATION.—An application filed by a local educational agency under subsection (a) shall be for a period not to exceed 3 fiscal years, may provide for the allocation of funds among programs and purposes authorized by this chapter for a period of 3 years, and may be amended annually as may be necessary to reflect changes without filing a new application.

(c) LOCAL EDUCATIONAL AGENCY DISCRETION.—Subject to the limitations and requirements of this chapter, a local educational agency shall have complete discretion in determining how funds under this subpart shall be divided among the areas of targeted assistance of this subpart. In exercising such discretion, a local educational agency shall ensure that expenditures under this subpart carry out the purposes of this chapter and are intended to meet the educational needs within the schools of that local educational agency.

(20 U.S.C. 2943)

Subpart 4—Effective Schools Programs

SEC. 1541. ESTABLISHMENT.

Funds shall be available under this chapter in accordance with sections 1521 and 1531 to—

(1) plan, implement, support, evaluate, revise, and strengthen effective schools programs;

(2) plan and conduct training and other professional development activities for teachers, administrators and other education personnel on the implementation of effective schools programs;

(3) provide technical assistance and promote State and local educational agency awareness of effective schools research, model programs, and implementation;

(4) develop and implement systems to evaluate and analyze effective schools programs;

(5) improve parent and community involvement and participation as part of an ongoing effective schools program;

(6) support model and demonstration programs related to effective schools programs; and

(7) develop and disseminate educational materials related to effective schools programs.

(20 U.S.C. 2951)

SEC. 1542. EFFECTIVE SCHOOLS.

For the purposes of this chapter the term "effective schools programs" means school-based programs that may encompass preschool through secondary school levels and that have the objectives of (1) promoting school-level planning, instructional improvement, and staff development, (2) increasing the academic achievement levels of all children and particularly educationally deprived children, and (3) achieving as ongoing conditions in the school the following factors identified through effective schools research as distinguishing effective from ineffective schools:

(A) strong and effective administrative and instructional leadership that creates consensus on instructional goals and organizational capacity for instructional problem solving;

(B) emphasis on the acquisition of basic and higher order skills;

(C) a safe and orderly school environment that allows teachers and pupils to focus their energies on academic achievement;

(D) a climate of expectation that virtually all children can learn under appropriate conditions; and

(E) continuous assessment of students and programs to evaluate the effects of instruction.

(20 U.S.C. 2952)

PART B—NATIONAL PROGRAMS AND ACTIVITIES

SEC. 1561. GENERAL AUTHORITY.

(a) AUTHORIZATION.—From funds reserved under section 1511(a)(2), the Secretary is authorized to carry out the programs and activities under this part.

(b) PRIORITY FUNDING.—Subject to the availability of funds for any fiscal year for this part, the Secretary shall make available—

(1) not less than $11,200,000 for National Diffusion Network activities under section 1562;

(2) not less than $8,200,000 for the Inexpensive Book Distribution program under section 1563;

(3) not less than $3,500,000 for the Arts in Education program under section 1564;

(4) not less than $3,200,000 for the law-related education program under section 1565; and

(5) not more than $1,500,000 for the Blue Ribbon Schools program under section 1566.

(20 U.S.C. 2961)

SEC. 1562. NATIONAL DIFFUSION NETWORK ACTIVITIES.

(a) PURPOSES.—The National Diffusion Network shall be a national program that recognizes and furthers excellence in education by—

(1) promoting the awareness and implementation of exemplary educational programs, products, and practices to interested elementary, secondary, and postsecondary institutions throughout the Nation; and

(2) promoting the utilization of the knowledge, talents, and services of local staff associated with various educational excellence recognition efforts.

The National Diffusion Network shall be designed to improve the quality of education through the implementation of promising and validated innovations and improvements in educational programs, products, and practices, and through the provision of training, consultation, and related assistance services.

(b) RESPONSIBILITIES OF SECRETARY.—In carrying out the activities under this section, which shall be limited to activities directly related to the National Diffusion Network, the Secretary shall—

(1) acquaint persons responsible for the operation of elementary, secondary, and postsecondary schools with information about exemplary educational programs, products, practices, and services;

(2) assist such persons in implementing programs, products, and practices which such persons determine may improve the quality of education in the schools for which they are responsible, by providing materials, initial training, and ongoing implementation assistance;

(3) ensure that all such activities, programs, products, and practices are subjected to rigorous evaluation with respect to their effectiveness and their capacity for implementation;

(4) provide program development assistance toward the recognition, dissemination, and implementation of promising practices that hold the potential for answering critical needs and that have achieved credibility because of their effective use in schools; and

(5) ensure that a substantial percentage of the innovations disseminated represent significant changes in practice for schools and teachers.

In carrying out paragraph (3) of this section, the Secretary shall conduct a single external review by a program effectiveness panel that focuses exclusively on whether the program is efficacious and transferable to other educational settings. Any activity, program, product, or practice which meets the criteria of the preceding sentence may then be disseminated through the National Diffusion Network, and each eligible recipient (as described in subsection (c)) may apply for assistance in accordance with subsection (d).

(c) ELIGIBLE RECIPIENTS OF GRANTS AND CONTRACTS.—For the purpose of carrying out the activities under this section, the Secretary is authorized to make grants to, and contracts with, local educational agencies, State educational agencies, institutions of higher education, and other public and private nonprofit educational institutions and organizations.

(d) FUNDING CRITERIA.—(1) For the purpose of determining which projects to fund under this section, the Secretary shall assess the extent to which the projects meet the following criteria:

(A) The applicant has a workable plan for disseminating its program.

(B) The program's approach is innovative.

(C) The program is accurate and up-to-date.

(2) Each applicant for assistance under this section shall submit statements and supporting materials as required by the Secretary but shall not be required to submit more than a representative sample of the program materials of the applicant.

(3) In establishing regulations under this section, including the specific evaluation criteria under paragraph (1), the Secretary shall consult with interested parties, including participants in the National Diffusion Network.

(4) For fiscal year 1988 only, the Secretary shall assess applications for financial assistance under this section on the basis of the application or reapplication proposals.

(20 U.S.C. 2962)

SEC. 1563. INEXPENSIVE BOOK DISTRIBUTION PROGRAM FOR READING MOTIVATION.

(a) AUTHORIZATION.—The Secretary is authorized (1) to enter into a contract with Reading is Fundamental (RIF) (hereinafter in this section referred to as the "contractor"), a private nonprofit organization which has as its primary purpose the motivation of children to learn to read, to support and promote the establishment of reading motivation programs which include the distribution of inexpensive books to students, and (2) to pay the Federal share of the cost of such programs.

(b) REQUIREMENTS OF CONTRACT.—The contract shall provide that—

(1) the contractor will enter into subcontracts with local private nonprofit groups or organizations or with public agencies (hereinafter referred to as "subcontractors") under which the subcontractors will agree to establish, operate, and provide the non-Federal share of the cost of reading motivational programs which include the distribution of books by gift or loan, to preschool and elementary and secondary school children;

(2) funds made available by the Secretary to a contractor pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating reading motivational programs as provided in paragraph (1);

(3) in the fiscal year 1991 and each succeeding fiscal year, the contractor will give priority in the selection of additional local programs to programs and projects which serve children and students with special needs including, at a minimum—

(A) low-income children (particularly such children in high poverty areas);

(B) children at risk for school failure;

(C) children with disabilities;

(D) emotionally disturbed children;

(E) foster children;

(F) homeless children;

(G) migrant children;

(H) children without access to libraries;

(I) institutionalized or incarcerated children; and

(J) children whose parents are institutionalized or incarcerated; and

(4) the contractor will meet such other conditions and standards as the Secretary determines to be necessary to assure the effectiveness of the programs authorized by this section and will provide such technical assistance as may be necessary to carry out the purposes of this section.

(c) RESTRICTION ON PAYMENTS.—The Secretary shall make no payment of the Federal share of the cost of acquiring and distributing books pursuant to a contract authorized by this section unless the Secretary determines that the contractor or subcontractor, as the case may be, has made arrangements with book publishers or distributors to obtain books at discounts at least as favorable as discounts that are customarily given by such publisher or distributor for book purchases made under similar circumstances in the absence of Federal assistance.

(d) DEFINITIONS.—For purposes of this section the term "Federal share" means—

(1) with respect to the cost of books purchased by a subcontractor for a program in a locality for distribution of such books to children in that locality, 75 percent of the cost to such subcontractor; or

(2) with respect to the cost of books purchased by a subcontractor for a program of distribution of books to children of migrant or seasonal farmworkers, 100 percent of the cost to such subcontractor for such books.

(20 U.S.C. 2963)

SEC. 1564. ARTS IN EDUCATION PROGRAM.

The Secretary shall carry out a program of grants and contracts to encourage and assist State and local educational agencies and other public and private agencies, organizations, and institutions to establish and conduct programs in which the arts are an integral part of elementary and secondary school curricula such as—

(1) programs with public and private cultural organizations, agencies, and institutions, including museums, libraries, and theaters;

(2) a program to develop and implement model projects and programs in the performing arts for children and youth, through arrangements made with the John F. Kennedy Center for the Performing Arts; and

(3) a program for the identification, development and implementation of model programs and projects in the arts for individuals with handicaps through arrangements with the organization Very Special Arts.

(20 U.S.C. 2964)

SEC. 1565. LAW-RELATED EDUCATION PROGRAM.

(1)[1](a) AUTHORIZATION.—The Secretary shall carry out a program of grants and contracts to encourage State and local educational agencies and other public and private nonprofit agencies, organizations, and institutions to provide law-related education programs.

(2) The Secretary shall give priority for grants and contracts under this section to agencies, organizations, and institutions described in paragraph (1) that plan to operate statewide programs.

(3)(A) Except as provided in subparagraph (B), the Secretary shall award grants and enter into contracts under this section for periods of 2 or 3 years.

(B) The Secretary may award a grant or enter into a contract under this section for a period of less than 2 years in any case in which the Secretary determines that special circumstances exist.

(b) DEFINITION.—For the purpose of this section, the term "law-related education" means education to equip nonlawyers with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which they are based.

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[1] So in law. Section 311(1)(A) of P.L. 102–62 (105 Stat. 313) amended section 1565 by inserting "(1)" before "(a)".

(c) Authorized Activities.—Funds made available for the purposes of this section may be available for activities such as—

(1) awareness activities to provide educators, law-related personnel, and the public with an understanding of what law-related education is;

(2) support for new and ongoing programs in elementary and secondary schools, adult education, community organizations, and institutions of higher education, to provide law-related education, to develop materials and methods, to conduct pilot and demonstration projects, and to disseminate the products of such activities;

(3) clearinghouse and technical assistance, to collect and provide information and assistance to institutions, groups, agencies, organizations, and individuals to aid in establishing, improving, and expanding law-related education activities;

(4) training for law-related personnel in the substance and practice of law-related education, including preservice and inservice seminars, workshops, institutes, and courses;

(5) research and evaluation to study and improve the effectiveness of materials and methods in law-related education;

(6) involvement of law-related organizations, agencies, and personnel, such as lawyers, law schools, law students, and law enforcement personnel in the provision of law-related education activities; and

(7) youth internships for outside-the-classroom experiences with the law and the legal system.

(d) Applications.—

(1) Any agency, organization, or institution described in subsection (a)(1) that desires to receive a grant or enter into a contract under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(2) The Secretary shall convene a panel of experts for purposes of reviewing applications submitted under paragraph (1). Such experts shall be individuals who have experience in and are familiar with law-related education.

(20 U.S.C. 2965)

SEC. 1566. BLUE RIBBON SCHOOLS PROGRAM.

(a) General Authority.— Subject to subsection (d), the Secretary is authorized to carry out programs to recognize elementary and secondary schools or programs which have established standards of excellence and which have demonstrated a high level of quality. Such programs shall be designated as "Blue Ribbon Schools". In selecting schools and programs to be recognized, the Secretary shall competitively select public and private schools or programs within local educational agencies in the States, schools operated for Indian children by the Department of the Interior, and schools operated by the Department of Defense for dependents of Department of Defense personnel.

(b) SELECTION PROCESS.—(1) The Secretary shall designate, each fiscal year, several categories for a Blue Ribbon Schools program. Such categories may include, but shall not be limited to, outstanding elementary schools, outstanding secondary schools, outstanding mathematics and science programs, or outstanding reading programs.

(2) Within each category, the Secretary shall determine the criteria and procedures for selection. Selection for such awards shall be based solely on merit. Schools or programs selected for awards under this section shall not be required to be representative of the States.

(c) ADMINISTRATIVE PROVISIONS.—(1) The Secretary shall carry out the provisions of this section including the establishment of the selection procedures, after consultation with appropriate outside parties.

(2) No award may be made under this section unless the local educational agency submits an application to the Secretary at such time, in such manner, and containing such information, as the Secretary may reasonably require.

(3) For the purposes of this section, the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) BLUE RIBBON AWARDS FOR CORRECTIONAL EDUCATION PROGRAMS.—The Secretary, through nominations provided by the Office on Correctional Education after consultation with representatives of correctional education organizations and others active in literacy education, shall annually make 1 or more awards under this section to effective and innovative programs for inmate education and literacy.

(20 U.S.C. 2966)

PART C—GENERAL ADMINISTRATIVE PROVISIONS

SEC. 1571. MAINTENANCE OF EFFORT; FEDERAL FUNDS SUPPLEMENTARY.

(a) MAINTENANCE OF EFFORT.—(1) Except as provided in paragraph (2), a State is entitled to receive its full allocation of funds under this chapter for any fiscal year if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(2) The Secretary shall reduce the amount of the allocation of funds under this chapter in any fiscal year in the exact proportion to which the State fails to meet the requirements of paragraph (1) by falling below 90 percent of both the fiscal effort per student and aggregate expenditures (using the measure most favorable to the State), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

(3) The Secretary may waive, for 1 fiscal year only, the requirements of this subsection if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable cir-

cumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

(b) FEDERAL FUNDS SUPPLEMENTARY.—A State or local educational agency may use and allocate funds received under this chapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under this chapter, be made available from non-Federal sources, and in no case may such funds be used so as to supplant funds from non-Federal sources.

(20 U.S.C. 2971)

SEC. 1572. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS.

(a) PARTICIPATION ON EQUITABLE BASIS.—(1) To the extent consistent with the number of children in the school district of a local educational agency which is eligible to receive funds under this chapter or which serves the area in which a program or project assisted under this chapter is located who are enrolled in private nonprofit elementary and secondary schools, or with respect to instructional or personnel training programs funded by the State educational agency from funds reserved for State use, such agency, after consultation with appropriate private school officials, shall provide for the benefit of such children in such schools secular, neutral, and nonideological services, materials, and equipment, including the participation of the teachers of such children (and other educational personnel serving such children) in training programs, and the repair, minor remodeling, or construction of public facilities as may be necessary for their provision (consistent with subsection (c) of this section), or, if such services, materials, and equipment are not feasible or necessary in one or more such private schools as determined by the local educational agency after consultation with the appropriate private school officials, shall provide such other arrangements as will assure equitable participation of such children in the purposes and benefits of this chapter.

(2) If no program or project is carried out under subsection (a)(1) of this section in the school district of a local educational agency, the State educational agency shall make arrangements, such as through contracts with nonprofit agencies or organizations, under which children in private schools in that district are provided with services and materials to the extent that would have occurred if the local educational agency had received funds under this chapter.

(3) The requirements of this section relating to the participation of children, teachers, and other personnel serving such children shall apply to programs and projects carried out under this chapter by a State or local educational agency, whether directly or through grants to or contracts with other public or private agencies, institutions, or organizations.

(b) EQUAL EXPENDITURES.—Expenditures for programs pursuant to subsection (a) shall be equal (consistent with the number of children to be served) to expenditures for programs under this chapter for children enrolled in the public schools of the local educational agency, taking into account the needs of the individual children and other factors which relate to such expenditures, and when funds available to a local educational agency under this chapter are used to concentrate programs or projects on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance area, or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be assured equitable participation in the purposes and benefits of such programs or projects.

(c) FUNDS.—(1) The control of funds provided under this chapter, and title to materials, equipment, and property repaired, remodeled, or constructed therewith, shall be in a public agency for the uses and purposes provided in this chapter, and a public agency shall administer such funds and property.

(2) The provision of services pursuant to this section shall be provided by employees of a public agency or through contract by such public agency with a person, an association, agency, or corporation who or which, in the provision of such services, is independent of such private school and of any religious organizations, and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this chapter shall not be commingled with State or local funds.

(d) STATE PROHIBITION WAIVER.—If by reason of any provision of law a State or local educational agency is prohibited from providing for the participation in programs of children enrolled in private elementary and secondary schools, as required by this section, the Secretary shall waive such requirements and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this section.

(e) WAIVER AND PROVISION OF SERVICES.—(1) If the Secretary determines that a State or a local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in private elementary and secondary schools as required by this section, the Secretary may waive such requirements and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this section.

(2) Pending final resolution of any investigation or complaint that could result in a determination under this subsection or subsection (d), the Secretary may withhold from the allocation of the affected State or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of those services.

(f) DETERMINATION.—Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State or local educational agency to meet the requirements of subsections (a) and (b).

(g) PAYMENT FROM STATE ALLOTMENT.—When the Secretary arranges for services pursuant to this section, the Secretary shall, after consultation with the appropriate public and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allotment of the State under this chapter.

(h) REVIEW.—(1) The Secretary shall not take any final action under this section until the State educational agency and the local educational agency affected by such action have had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why that action should not be taken.

(2) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under paragraph (1) of this subsection, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based this action, as provided in section 2112 of title 28, United States Code.

(3) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(4) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(i) Prior Determination.—Any bypass determination by the Secretary under chapter 2 of the Education Consolidation and Improvement Act of 1981 shall to the extent consistent with the purposes of this chapter apply to programs under this chapter.

(20 U.S.C. 2972)

SEC. 1573. EVALUATIONS AND REPORTING.

(a) Local Educational Agencies.—A local educational agency which receives financial assistance under this chapter shall report annually to the State educational agency on the use of funds under section 1531. Such reporting shall be carried out in a manner which minimizes the amount of paperwork required while providing the State educational agency with the necessary information under the preceding sentence. Such report shall be made available to the public.

(b) State Educational Agencies.—A State educational agency which receives financial assistance under this chapter shall evaluate the effectiveness of State and local programs under this chapter in accordance with section 1522(a)(6)(B). That evaluation shall be submitted for review and comment by the State advisory committee and shall be made available to the public. The State educational agency shall submit to the Secretary a copy of the evaluation and a summary of the reports under subsection (a).

(c) Reports.—(1) The Secretary, in consultation with State and local educational agency representatives, shall develop a model system which State educational agencies may use for data collection and reporting under this chapter.

(2)(A) The Secretary shall submit annually a report to the Congress for the use of funds, the types of services furnished, and the students served under this chapter.

(B) The Secretary shall not later than October 1, 1992, submit a report to the Congress summarizing evaluations under subsection (b) in order to provide a national overview of the uses of funds and effectiveness of programs under this chapter.

(20 U.S.C. 2973)

SEC. 1574. FEDERAL ADMINISTRATION.

(a) TECHNICAL ASSISTANCE.—The Secretary, upon request, shall provide technical assistance to State and local educational agencies under this chapter, particularly with respect to implementation of the programs and activities under subpart 4.

(b) RULEMAKING.—The Secretary shall issue regulations under this chapter only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements and assurances required by this chapter.

(c) AVAILABILITY OF APPROPRIATIONS.—Notwithstanding any other provision of law, unless expressly in limitation of this subsection, funds appropriated in any fiscal year to carry out activities under this chapter shall become available for obligation on July 1 of such fiscal year and shall remain available for obligation until the end of the subsequent fiscal year.

(d) SPECIAL RULE.—The provisions of sections 1433 and 1434 shall apply to the programs authorized by this chapter.

(20 U.S.C. 2974)

SEC. 1575. APPLICATION OF GENERAL EDUCATION PROVISIONS ACT.

(a) GENERAL RULE.—Except as otherwise specifically provided by this section, the General Education Provisions Act shall apply to the programs authorized by this chapter.

(b) APPLICABILITY.—The following provisions of the General Education Provisions Act shall be superseded by the specified provisions of this chapter with respect to the programs authorized by this chapter:

(1) Section 408(a)(1) of the General Education Provisions Act is superseded by section 1574(b) of this chapter.

(2) Section 426(a) of such Act is superseded by section 1574(a) of this chapter.

(3) Section 427 of such Act is superseded by section 1534(a)(5) of this chapter.

(4) Section 430 of such Act is superseded by sections 1522 and 1533 of this chapter.

(c) SPECIAL RULE.—Sections 434, 435, and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, may not apply to the programs authorized by this chapter and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this chapter.

(20 U.S.C. 2975)

SEC. 1576. TRANSITION PROVISIONS.

(a) REGULATIONS.—All orders, determinations, rules, regulations, permits, grants, and contracts, which have been issued under chapters 2 and 3 of the Education Consolidation and Improvement Act of 1981 (as in effect on the date before the effective date of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988), or which are issued under such Act on or before the effective date of this Act shall continue in effect until modified or revoked by the Secretary, by a court of competent jurisdiction, or by operation of law other than this Act.

(b) EFFECT ON PENDING PROCEEDINGS.—The provisions of this chapter shall not affect administrative or judicial proceedings pending on the effective date of this Act under chapters 2 and 3 of the Education Consolidation and Improvement Act of 1981.

(c) TRANSITION.—With respect to the period beginning July 1, 1988, and ending June 30, 1989, no recipient of funds under this Act or chapter 2 of the Education Consolidation and Improvement Act of 1981 shall be held to have expended such funds in violation of the requirements of this Act or of such Act if such funds are expended in accordance with this Act or such Act.

(20 U.S.C. 2976)

TITLE II—CRITICAL SKILLS IMPROVEMENT

PART A—DWIGHT D. EISENHOWER MATHEMATICS AND SCIENCE EDUCATION ACT

SEC. 2001. SHORT TITLE.

This part may be cited as the "Dwight D. Eisenhower Mathematics and Science Education Act".

(20 U.S.C. 2981)

SEC. 2002. STATEMENT OF PURPOSE.

The purpose of this part is to strengthen the economic competitiveness and national security of the United States by improving the skills of teachers and the quality of instruction in mathematics and science in the Nation's public and private elementary and secondary schools through assistance to State educational agencies, local educational agencies, and institutions of higher education.

(20 U.S.C. 2982)

Subpart 1—State Grants and National Programs[1]

SEC. 2003. PROGRAM AUTHORIZED.

(a) GRANTS.—The Secretary is authorized to make grants to States and discretionary grants in accordance with the provisions of this subpart for strengthening the skills of teachers and improving instruction in mathematics and science.

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[1] So in original, should be set in 10 point type.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of this part, $250,000,000 for fiscal year 1989 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(20 U.S.C. 2983)

SEC. 2004. ALLOCATION OF FUNDS.

(a) IN GENERAL.—(1) From the amount appropriated under section 2003(b) for any fiscal year, the Secretary shall reserve—

(A) not more than ½ of 1 percent for allocation among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective needs for assistance under this subpart;

(B) ½ of 1 percent for programs for Indian students served by schools funded by the Secretary of the Interior consistent with the purposes of this subpart; and

(C) 4 percent for section 2012.

(2) The remainder of the amount so appropriated (after meeting the requirements of paragraph (1)) shall be allocated among the States (treating the District of Columbia and Puerto Rico as States) as follows—

(A) ½ of such remainder shall be allocated among the States by allocating to each State an amount which bears the same ratio to such ½ of such remainder as the number of children aged 5 to 17, inclusive, in the State bears to the number of such children in all States; and

(B) ½ of such remainder shall be allocated among the States according to each State"s share of allocations under chapter 1 of the Education Consolidation and Improvement Act of 1981 or part A of chapter 1 of title I of this Act, whichever program was effective for the previous fiscal year,

except that no State shall receive less than ½ of 1 percent of the amount available under this subsection in any fiscal year or less than the amount allotted to such State for fiscal year 1988 under title II of the Education for Economic Security Act.

(3) For the purposes of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(4) The number of children aged 5 to 17, inclusive, in the State and in all States shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.

(5) The Secretary shall make payments under paragraph (1)(B) on whatever terms the Secretary determines will best carry out the purposes of this subpart.

(b) REALLOTMENT OF UNUSED FUNDS.—The amount of any State's allotment under subsection (a) for any fiscal year to carry out this subpart which the Secretary determines will not be required for that fiscal year to carry out this subpart shall be available for reallotment from time to time, on such dates during that year as the Secretary may determine, to other States in proportion to the original allotments to those States under subsection (a) for that year but with such proportionate amount for any of those other States being reduced to the extent it exceeds the sum the Secretary estimates that State needs and will be able to use for that year; and the total of those reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amounts reallotted to a State under this subsection during a year shall be deemed a subpart of its allotment under subsection (a) for that year.

(20 U.S.C. 2984)

SEC. 2005. IN-STATE APPORTIONMENT.

(a) ELEMENTARY AND SECONDARY EDUCATION PROGRAMS.—(1) For each fiscal year, an amount equal to 75 percent of each State's allotment under section 2004 shall be used for elementary and secondary education programs in accordance with section 2006, for demonstration and exemplary programs under section 2006(c) and for tend local and other Federal resources, especially with respect to any programs available from the National Science Foundation, or the Department of Energy, or both;

(4) if applicable, describe how the programs will use other resources of the community and involve public agencies, private industry, institutions of higher education, public and private nonprofit organizations (including, museums, libraries, educational television stations, professional science, mathematics, and engineering associations), and other appropriate institutions;

(5) assure that programs will take into account the need for greater access to and participation in mathematics and science programs by students from historically underrepresented groups, including females, minorities, individuals with limited-English proficiency, the economically disadvantaged, and the handicapped; and

(6) assure that the programs will be assessed, that progress made will be reported in terms of numbers of teachers and students affected, and that the results will be submitted to the State educational agency in the time and manner required.

(c) RENEWAL OF PAYMENTS.—The State educational agency shall renew payments to local educational agencies under this section based upon a determination by the State educational agency that the local educational agency is making adequate progress toward the goals of this subpart. The State educational agency will not disapprove an application without notice and opportunity for a hearing.

(20 U.S.C. 2989)

SEC. 2010. PARTICIPATION OF CHILDREN AND TEACHERS FROM PRIVATE SCHOOLS.

(a) PARTICIPATION OF PRIVATE SCHOOL STUDENTS.—To the extent consistent with the number of children in the State or in the school district of each local educational agency who are enrolled in private nonprofit elementary and secondary schools, such State or agency shall, after consultation with appropriate private school representatives, make provision for including services and arrangements for the benefit of such children as will assure the equitable participation of such children in the purposes and benefits of this subpart.a consortium with at least 1 other local educational agency or institution of higher education receiving assistance under this section.

(2) WAIVER.—The State educational agency shall waive the application of paragraph (1) in the case of any local educational agency that demonstrates that the amount of its allocation is sufficient to provide a program of sufficient size, scope, and quality to be effective. In granting waivers under the preceding sentence, the State educational agency shall—

(A) give special consideration to local educational agencies serving rural areas; and

(B) consider cash or in-kind contributions provided from State or local sources that may be combined with the local educational agency's allocation for the purpose of providing services under this part.

(20 U.S.C. 2985)

SEC. 2006. ELEMENTARY AND SECONDARY EDUCATION PROGRAMS.

(a) IN GENERAL.—The amount apportioned under section 2005(a)(2) from each State's allotment under this subpart shall be used by the State educational agency to strengthen elementary and secondary education programs in accordance with the provisions of this section.

(b) LOCAL EDUCATIONAL AGENCIES.—(1) Each local educational agency shall use funds distributed under this subpart for—

(A) the expansion and improvement of preservice training, inservice training, and retraining of teachers and other appropriate school personnel in the fields of mathematics and science, including vocational education teachers who use mathematics and science in the courses of study they teach;

(B) recruitment or retraining of minority teachers to become mathematics and science teachers;

(C) training in and instructional use of computers, video, and other telecommunications technologies as part of a mathematics and science program (which may include the purchase of computers or other telecommunications equipment in schools with an enrollment of 50 percent or more of students from low-income families after all other training needs have been met);

(D) integrating higher order analytical and problem-solving skills into the mathematics and science curriculum; or

(E) providing funds for grants projects for individual teachers within the local educational agency to undertake projects to improve their teaching ability or to improve the instructional materials used in their classrooms in mathematics and science.

(2) Such training and instruction may be carried out through agreements with public agencies, private industry, institutions of higher education, and nonprofit organizations, including museums, libraries, educational television stations, professional science, mathematics and engineering associations, and other appropriate institutions. Agreements for funds available under section 2004(a)(1)(B) may be made with institutions of higher education receiving funds under the Tribally Controlled Community College As-

sistance Act of 1978. A local educational agency may carry out the activities authorized by this paragraph with one or more other local educational agencies within the State, or with the State educational agency, or both. Each local educational agency shall assure that programs of training, inservice training and retraining will take into account the need for greater access to and participation in mathematics and science programs and careers of students from historically underrepresented groups, including females, minorities, individuals with limited-English proficiency, the handicapped, migrants, and, especially, gifted and talented children from within such groups.

(3) A local educational agency for any fiscal year may apply for funds as part of a consortium with other local educational agencies, institutions of higher education, or an intermediate educational unit for the conduct of local programs. The State educational agency may assist in the formation of consortia between local educational agencies, institutions of higher education, or intermediate educational units to provide services for the teachers and students in such local educational agency at the request of such local educational agency.

(4) Not more than 5 percent of funds available to the local educational agency for the purpose of this section for any fiscal year may be used for local administration.

(c) DEMONSTRATION AND EXEMPLARY PROGRAMS.—Not less than 5 percent of the amount available under this section shall be used by the State educational agency for—

(1) demonstration and exemplary programs for teacher training and retraining and inservice upgrading of teacher skills in the fields of mathematics and science;

(2) demonstration and exemplary programs for instructional equipment and materials in such fields and necessary technical assistance;

(3) demonstration and exemplary programs for special projects for historically underrepresented and underserved populations and for gifted and talented students; or

(4) the dissemination of information to all local educational agencies within the State relating to the exemplary programs in the fields of mathematics and science.

In providing financial assistance for such demonstration and exemplary programs, the State educational agency shall give special consideration to special projects in mathematics and science to historically underrepresented and underserved populations of students, including females, minorities, handicapped individuals, individuals with limited-English proficiency, and migrant students, and to programs for gifted and talented students. The programs for gifted and talented students may include assistance to magnet schools for such students.

(d) PRIORITY FOR TEACHER TRAINING.—

(1) GENERAL RULE.—Except as provided in paragraph (2), in any fiscal year beginning after September 30, 1990 for which a local educational agency receives under this section an amount that is larger than the amount such agency received under this section for the fiscal year 1990, the excess of such amount over the amount received under this section for the fis-

cal year 1990 shall first be used to provide training for mathematics teachers and science teachers in elementary and middle schools.

(2) WAIVER.—The Secretary may waive the application of paragraph (1) in the case of any local educational agency that demonstrates to the Secretary that mathematics teachers and science teachers in the elementary and middle schools under the jurisdiction of such local educational agency will receive adequate training without using such excess amounts for such training.

(e) TECHNICAL ASSISTANCE AND ADMINISTRATIVE COSTS.—Not more than 5 percent of the amount available under this section, or $20,000, whichever is greater, may be used by the State educational agency—

(1) to provide technical assistance to local educational agencies, institutions of higher education, and nonprofit organizations, including museums, libraries, and educational television stations, in the conduct of programs specified in subsection (b); and

(2) for the costs of administration and assessment of programs assisted under this part.[1]

(20 U.S.C. 2986)

SEC. 2007. HIGHER EDUCATION PROGRAMS.

(a) IN GENERAL.—(1) Except as provided in paragraph (2), the amount apportioned under section 2005(b) from each State's allotment under this subpart shall be used by the State agency for higher education for education programs in accordance with the provisions of this section.

(2) Funds available under section 2004(a)(1)(B) and reserved under section 2005(b) shall be used, in accordance with the provisions of this section, to support programs conducted within institutions of higher education funded through the Bureau of Indian Affairs.

(b) GRANTS TO INSTITUTIONS OF HIGHER EDUCATION.—(1)(A) Not less than 95 percent or the remainder after application of subsection (d).[2] of the amount available for this section shall be used by the State agency for higher education for grants to institutions of higher education in accordance with the provisions of this subsection.

(B) The State agency for higher education shall make funds available on a competitive basis to institutions of higher education in the State which apply for payments under this section and which demonstrate involvement of local educational agencies. The State agency for higher education shall make every effort to ensure equitable participation of private and public institutions of higher education.

(2) The amount available under this subsection shall be used for—

(A) establishing traineeship programs for new teachers who will specialize in teaching mathematics and science at the secondary school level;

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[1] So in law. Probably should be subpart.

[2] So in law. Period should be stricken.

(B) retraining of secondary school teachers who specialize in disciplines other than the teaching of mathematics or science to specialize in the teaching of mathematics or science, including the provision of stipends for participation in institutes authorized under title I of the Education for Economic Security Act or any other program of the National Science Foundation; and

(C) inservice training for elementary, secondary, and vocational school teachers and training for other appropriate school personnel to improve their teaching skills in the fields of mathematics and science, including stipends for participation in institutes authorized under title I of the Education for Economic Security Act, or any other program of the National Science Foundation.

Each institution of higher education receiving a grant under this subsection shall assure that programs of training, retraining, and inservice training will take into account the need for greater access to and participation in mathematics and science and careers by students from historically underrepresented and underserved groups, including females, minorities, individuals with limited-English proficiency, the handicapped, migrants, and the gifted and talented, and will ensure cooperative agreements or cooperative arrangements with local educational agencies.

(3) No institution of higher education may receive assistance under paragraphs (2)(B) and (2)(C) of this subsection unless the institution enters into an agreement with a local educational agency, or consortium of such agencies, to provide inservice training and retraining for the elementary and secondary school teachers in the public and private schools of the school district of each such agency.

(c) Cooperative Programs.—The State agency for higher education may use funds described in subsection (b)(1)(A) for cooperative programs among institutions of higher education, local educational agencies, State educational agencies, private industry, and nonprofit organizations, including museums, libraries, educational television stations, and professional matehmatics[1], science, and engineering societies and associations for the development and dissemination of projects designed to improve student understanding and performance in science and mathematics.

(d) Assessment and Administrative Costs.—Not to exceed 5 percent of the amount available under this section, or $20,000, whichever is greater, may be used by the State agency for higher education for—

(1) the State assessment required by section 2008(c); and

(2) the costs incurred by such agency for administration and evaluation of programs assisted under this subpart.

(20 U.S.C. 2987)

SEC. 2008. STATE APPLICATION.

(a) Application.—Each State which desires to receive a grant under this subpart shall file an application with the Secretary which covers a period of 3 fiscal years. Such application shall be filed at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

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[1] So in original. Probably should be "mathematics".

(b) CONTENTS OF APPLICATION.—Each such application shall—

(1) designate the State educational agency for the purpose of programs described in section 2006, and the State agency for higher education for the purpose of programs described in section 2007 as the agency or agencies responsible for the administration and supervision of the programs described in section 2006 or 2007, as the case may be;

(2) provide assurances that—

(A) payments will be distributed by the State in accordance with the provisions of this title;

(B) for programs described in section 2006, the provisions of section 2010 will be carried out;

(C) the State will provide such fiscal control and funds accounting as the Secretary may require;

(D) funds provided under this part will supplement, not supplant, State and local funds made available for activities authorized under this subpart;

(E) during the 3-year period of the plan, the State will evaluate its standards for teacher preparation, licensing, certification, and endorsement for elementary and secondary mathematics and science;

(F) the State will take into account the needs for greater access to and participation in mathematics and science by students and teachers from historically underrepresented groups including females, minorities, individuals with limited-English proficiency, the economically disadvantaged, and the handicapped;

(G) that the needs of teachers and students in areas with high concentrations of low-income students and sparsely populated areas will be considered in the distribution of funds reserved for State use; and

(H) that the programs conducted with State funds will be assessed annually (including statistics on the number of students and teachers involved in these programs) and that the data from such assessments, as well as a summary of the local assessments required under section 2009(b)(6), will be submitted to the Secretary;

(3) if appropriate, provide a description of how funds paid under this subpart will be coordinated with State and local funds and other Federal resources, particularly with respect to any program available from the National Science Foundation or the Department of Energy, or both; and

(4) describe procedures—

(A) for submitting applications for programs described in sections 2006 and 2007 for distribution of payments under this subpart within the State, and

(B) for approval of applications by the appropriate State agency, including appropriate procedures to assure that such agency will not disapprove an application without notice and opportunity for a hearing.

(c) INFORMATIONAL REQUIREMENTS.—Each State application shall also contain the following:

(1) A projection of the supply and demand for teachers within the State in all the mathematics and science subject areas at the elementary and secondary levels, including a consideration of the impact of changing State graduation requirements and other State reforms upon such supply.

(2) An assessment of the current elementary and secondary curriculum needs within the State in mathematics and science.

(d) DESCRIPTION OF ASSISTED ACTIVITIES.—Each application shall also contain the following descriptions:

(1) How the programs under this Act will meet the teacher training and curriculum needs projected under subsections (c)(1) and (c)(2).

(2) The specific activities that will be undertaken that involve institutions of higher education.

(3) The specific activities that will be supported with funds reserved for State use and how those activities relate to the State's needs in mathematics and science.

(4) The specific activities the State will support to improve access of historically underrepresented groups in mathematics and science education.

(e) APPROVAL.—The Secretary shall expeditiously approve any State application that meets the requirements of this section.

(20 U.S.C. 2988)

SEC. 2009. LOCAL APPLICATION.

(a) APPLICATION.—A local educational agency that desires to receive a grant under this subpart shall submit an application which covers a 3-year period (singly or in conjunction with other local educational agencies, institutions of higher education, or an intermediate educational unit).

(b) CONTENTS OF APPLICATION.—A local educational agency application shall—

(1) provide a summary assessment of—

(A) the needs of its current teachers in mathematics and science and whether a shortage of such qualified teachers exists or will exist within 5 years after the date of the application;

(B) the current levels of mathematics and science student achievement in the local educational agency; and

(C) the curricular needs of the local educational agency in mathematics and science;

(2) describe how the local educational agency plans to use funds received under this subpart to meet the needs described in paragraph (1)(A);

(3) if applicable, describe how funds under this subpart will be coordinated with State and local and other Federal resources, especially with respect to any programs available from the National Science Foundation, or the Department of Energy, or both;

(4) if applicable, describe how the programs will use other resources of the community and involve public agencies, private industry, institutions of higher education, public and pri-

vate nonprofit organizations (including,[1] museums, libraries, educational television stations, professional science, mathematics, and engineering associations), and other appropriate institutions;

(5) assure that programs will take into account the need for greater access to and participation in mathematics and science programs by students from historically underrepresented groups, including females, minorities, individuals with limited-English proficiency, the economically disadvantaged, and the handicapped; and

(6) assure that the programs will be assessed, that progress made will be reported in terms of numbers of teachers and students affected, and that the results will be submitted to the State educational agency in the time and manner required.

(c) RENEWAL OF PAYMENTS.—The State educational agency shall renew payments to local educational agencies under this section based upon a determination by the State educational agency that the local educational agency is making adequate progress toward the goals of this subpart. The State educational agency will not disapprove an application without notice and opportunity for a hearing.

(20 U.S.C. 2989)

SEC. 2010. PARTICIPATION OF CHILDREN AND TEACHERS FROM PRIVATE SCHOOLS.

(a) PARTICIPATION OF PRIVATE SCHOOL STUDENTS.—To the extent consistent with the number of children in the State or in the school district of each local educational agency who are enrolled in private nonprofit elementary and secondary schools, such State or agency shall, after consultation with appropriate private school representatives, make provision for including services and arrangements for the benefit of such children as will assure the equitable participation of such children in the purposes and benefits of this subpart.

(b) PARTICIPATION OF PRIVATE SCHOOL TEACHERS.—To the extent consistent with the number of children in the State or in the school district of a local educational agency who are enrolled in private nonprofit elementary and secondary schools, such State, or agency or institution of higher education shall, after consultation with appropriate private school representatives, make provision, for the benefit of such teachers in such schools, for such inservice and teacher training and retraining as will assure equitable participation of such teachers in the purposes and benefits of this subpart.

(c) WAIVER.—If by reason of any provision of law a State or local educational agency or institution of higher education is prohibited from providing for the participation of children or teachers from private nonprofit schools as required by subsections (a) and (b), or if the Secretary determines that a State or local educational agency has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children or teachers, subject to the requirements of this section. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with section 1017 of this Act.

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[1] So in original. The comma probably should not appear.

(20 U.S.C. 2990)

SEC. 2011. FEDERAL ADMINISTRATION.

(a) Technical Assistance and Evaluation Procedures.—The Secretary shall provide technical assistance and, in consultation with State and local representatives, shall develop procedures for State and local evaluations of the programs under this subpart.

(b) Summary.—The Secretary shall submit to the Congress every 2 years a summary of the State evaluations of programs under this subpart.

(c) Model Reporting Standards.—In conjunction with State and local educational agencies and organizations of mathematics and science educators, the Secretary shall develop model reporting standards to encourage comparability of data required under sections 2008 and 2009.

(20 U.S.C. 2991)

SEC. 2012. NATIONAL PROGRAMS.

(a) Amount Available.—From 4 percent of amounts appropriated under section 2003(b), the Secretary shall make grants or enter into cooperative agreements in accordance with this section.

(b) Eligible Grantees.—The Secretary shall make grants to and enter into cooperative agreements with State and local educational agencies, institutions of higher education, and public and private nonprofit organizations (including museums, libraries, educational television producers, distributors, and stations, and professional science, mathematics, and engineering societies and associations) for programs of national significance in mathematics and science instruction. The Secretary shall give special consideration in providing such assistance to local educational agencies (or consortia thereof), institutions of higher education, and public and private nonprofit organizations, providing special services to historically underserved and underrepresented populations (and especially gifted and talented children from within such populations) in the fields of mathematics and science.

(c) Programs for Training and Retraining Teachers.—In awarding grants and cooperative agreements, the Secretary shall also give special consideration to programs of such institutions and organizations (such as museums) which train and retrain teachers in methods of scientific inquiry and provide materials which aid the education of students. In awarding grants and cooperative agreements, the Secretary shall give preference to developed and currently operating programs which are disseminated throughout the region in which such an institution or organization is located.

(d) National Clearinghouse for Science, Mathematics, and Technology Education Materials.—

(1) Clearinghouse authorized.—The Secretary, in consultation with the Director, may award a grant or contract to establish a National Clearinghouse for Mathematics and Science Education (hereinafter in this subsection referred to as the "Clearinghouse").

(2) APPLICATION AND AWARD BASIS.—Each entity desiring to establish and operate the Clearinghouse authorized by this subsection shall submit an application to the Secretary at such time, in such manner and accompanied by such information as the Secretary may reasonably require. The grant or contract awarded pursuant to paragraph (1) shall be made on a competitive, merit basis.

(3) DURATION.—The grant or contract awarded under this section shall be awarded for a period of 5 years and shall be reviewed by the Secretary no later than 30 months from the date the grant or contract is awarded.

(4) USE OF FUNDS.—The grant awarded under this subsection shall be used to—

(A) maintain a permanent repository of mathematics and science education instructional materials and programs for elementary and secondary schools, including middle schools, (including, to the extent practicable, all materials and programs developed with Federal and non-Federal funds, such as instructional materials developed by the Department of Education, materials developed by State and national mathematics and science programs assisted under this part, and other instructional materials) for use by the regional consortiums established under subpart 2 of this part and by the general public;

(B) compile information on all mathematics and science education programs administered by each Federal agency or department;

(C) disseminate information, programs, and instructional materials to the public, dissemination networks, and the regional consortiums under subpart 2 of this part; and

(D) coordinate with identifiable and existing data bases containing mathematics and science curriculum and instructional materials, including Federal and non-Federal data bases.

(5) SUBMISSION TO CLEARINGHOUSE.—Each Federal agency or department which develops mathematics or science education instructional material or programs, including the National Science Foundation, and the Department of Education, shall submit to the Clearinghouse copies of such material or programs.

(6) PEER REVIEW.—The Secretary shall establish a peer review process to select the recipient of the award under this subsection.

(7) STEERING COMMITTEE.—The Secretary may appoint a steering committee to recommend policies and activities for the Clearinghouse.

(8) APPLICATION OF COPYRIGHT LAWS.—Nothing in this subsection shall be construed to allow the use or copying, in any media, of any material collected by the Clearinghouse that is protected under the copyright laws of the United States unless the permission of the owner of the copyright is obtained. The Clearinghouse, in carrying out the provisions of this subsection, shall ensure compliance with the provisions of title 17 of the United States Code.

(e) MODEL PROGRAMS FOR INSTRUCTION AND TRAINING IN THE USE OF COMPUTERS.—

(1) GRANTS AUTHORIZED.—The Secretary may make grants to model programs for training and instruction in the use of computers as part of the mathematics and science curriculum of elementary and secondary schools to pay the Federal share of the cost of improving and expanding such programs.

(2) FEDERAL SHARE.—(A) Except as provided in subparagraph (C), the Federal share of the cost of improving and expanding a model program under this subsection shall not exceed 50 percent of such cost.

(B) Not less than 25 percent of the non-Federal share of the cost of improving and expanding a model program under this subsection shall be in cash.

(C) The Secretary may waive the application of this paragraph in the case of any model program operated by a school that demonstrates an inability to obtain funds from non-Federal sources for the program.

(3) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to applicants that demonstrate the ability to—

(A) develop a program that can be applied nationally;

(B) include a shared commitment from a combination of local parties, such as teachers, the business community, and local educational agencies;

(C) provide teacher training programs in elementary and secondary schools, including middle schools, that are designed to improve the quality of mathematics and science instruction through the use of computers as an instructional tool;

(D) integrate higher order analytical and problem-solving skills into mathematics and science curricula; and

(E) provide interactive and manipulative application as part of the instructional delivery system.

(f) DISSEMINATION OF INFORMATION.—The Secretary shall disseminate information concerning grants and cooperative agreements under this section to State and local educational agencies and institutions of higher education. Such dissemination of information shall include examples of exemplary national programs in mathematics and science instruction and necessary technical assistance for the establishment of similar programs.

(20 U.S.C. 2992)

Subpart 2—Regional Mathematics and Science Education Consortiums[1]

SEC. 2016. PROGRAM ESTABLISHED.

(a) IN GENERAL.—

(1) GRANTS AUTHORIZED.—The Secretary, in consultation with the Director, is authorized to award grants or contracts

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[1] So in original, should be set in 10 point type.

to eligible entities to establish and operate regional mathematics and science education consortia for the purpose of—

(A) disseminating exemplary mathematics and science education instructional materials; and

(B) providing technical assistance for the implementation of teaching methods and assessment tools for use by elementary and secondary school students, teachers and administrators.

(2) NUMBER.—The Secretary shall, in accordance with the provisions of this section, award at least 1 grant or contract to an eligible entity in each region.

(3) SPECIAL RULE.—In any fiscal year, if the amount appropriated pursuant to the authority of section 2023 is less than $4,500,000, then the Secretary may waive the provisions of paragraph (2) and award grants or contracts of sufficient size, scope and quality to carry out the provisions of this section.

(b) GRANT TERM AND REVIEW.—Grants under this subpart shall be awarded for a period of not more than 5 years and shall be reviewed before the end of the 30-month period beginning on the date the grant is awarded. Grants shall be awarded before the end of the 12-month period beginning on the date of the enactment of an Act making appropriations to carry out the provisions of this subpart.

(c) AMOUNT.—In making grants under this subpart, the Secretary shall assure that there is a relatively equal distribution of the funds made available among the regions, but the Secretary may award additional funds to a regional consortium on the basis of population and geographical conditions of the region being served.

(20 U.S.C. 2994)

SEC. 2017. USE OF FUNDS.

Funds provided under this subpart may be used by a regional consortium, under the direction of a regional board established pursuant to section 2019, to—

(1) identify, adapt, disseminate, and implement mathematics and science education instruction materials, teaching methods, and assessment tools for use by elementary and secondary school students;

(2) assist, train and provide technical assistance to classroom teachers, administrators, and other educators to identify, implement or adapt the instructional materials, teaching methods and assessment tools described in paragraph (1);

(3) provide for the training of classroom teachers to enable such teachers to instruct other teachers, administrators, and educators in the use of the instructional materials, teaching methods and assessment tools described in paragraph (1) in the classroom;

(4) work with classroom teachers in the identification and adaptation of such instructional materials, teaching methods, and assessment tools for use in classrooms within the region;

(5) assist classroom teachers, where appropriate, in securing training to enhance such teachers' subject knowledge and

teaching skills in the areas of science and mathematics education;

(6) when necessary, provide financial assistance to enable teachers and other educators to attend and participate in the activities of the regional consortium;

(7) implement programs and activities designed to meet the needs of groups that are underrepresented in, and underserved by, mathematics and science education;

(8) help State and local educational agencies or consortia thereof assess the need for and the desirability of regional mathematics and science academies;

(9) develop and disseminate early childhood education mathematics and science instructional materials;

(10) develop intergenerational projects to train senior citizen volunteers in the implementation of interactive science processes and activities for use by elementary and secondary school students;

(11) disseminate information regarding informal mathematics and science education activities and programs offered by Federal agencies and private or public agencies and institutions within the region;

(12) provide technical assistance in order to maximize the effectiveness of such instructional materials and programs and fulfill the instructional goals of the recipients of such materials and programs;

(13) collect data on activities assisted under this subpart in order to evaluate the effectiveness of the activities of the regional consortiums;

(14) if feasible, maintain on-line computer networks with all regional consortiums and the National Clearinghouse for Science and Mathematics Education Materials established under section 2012(e)[1];

(15) assist local and State educators in identifying science equipment needs; and

(16) coordinate activities carried out by the regional consortium with activities carried out by the appropriate regional education laboratory supported under section 405(d)(4)(A)(i) of the General Education Provisions Act.

(20 U.S.C. 2994a)

SEC. 2018. APPLICATION AND REVIEW.

(a) IN GENERAL.—Each eligible entity desiring to receive a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and accompanied by such additional information as the Secretary may reasonably require. Each such application shall—

(1) demonstrate that the eligible entity has demonstrated expertise in the fields of mathematics and science education;

(2) demonstrate that the eligible entity shall implement and disseminate mathematics and science education instructional materials, teaching methods, and assessment tools

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[1] So in original. Probably should be "2012(d)".

through a consortium of the region's mathematics and science education organizations and agencies;

(3) demonstrate that the eligible entity shall carry out the functions of the regional consortium;

(4) describe the activities for which assistance is sought;

(5) demonstrate that the eligible entity shall implement and disseminate mathematics and science education instructional materials, teaching methods and assessment tools;

(6) demonstrate that emphasis will be given to programs and activities designed to meet the needs of groups that are underrepresented in, and underserved by, mathematics and science education;

(7) describe steps to be taken to provide for the equitable participation of children and teachers from private elementary and secondary schools consistent with section 2010;

(8) demonstrate that the business community in the region served by the regional consortium will play an integral role in designing and supporting the regional consortium's work;

(9) demonstrate that the eligible entity will consider the resources of existing Star Schools consortia established pursuant to the Star Schools Program Assistance Act in carrying out the provisions of this part, where appropriate; and

(10) assure that the entity will conduct its activities and supervise its personnel in a manner that effectively ensures compliance with the copyright laws of the United States.

(b) APPROVAL OF APPLICATION.—

(1) IN GENERAL.—The Secretary shall approve or disapprove applications submitted pursuant to subsection (a) in accordance with the criteria and procedures established under paragraph (2).

(2) PROCEDURES AND CRITERIA.—The Secretary shall develop procedures and criteria designed to ensure that grants are awarded on the basis of merit as determined by the competitive peer review process described in paragraph (3).

(3) NATIONAL PANEL.—(A) The Secretary, in consultation with the Director, shall establish a national panel, or to the extent necessary, panels, to submit to the Secretary recommendations for awards of grants under this subpart. The Secretary shall appoint the members of such panel or panels.

(B) Each panel appointed as required by subparagraph (A) shall include participation, to the extent feasible, from each region.

(20 U.S.C. 2994b)

SEC. 2019. REGIONAL BOARDS.

(a) IN GENERAL.—Each eligible entity receiving a grant or contract under this subpart shall establish a regional board to oversee the administration and establishment of program priorities for the regional consortium established by such eligible entity. Such regional board shall be broadly representative of the agencies and organizations participating in the regional consortium.

(b) PROHIBITION ON USE OF FEDERAL FUNDS.—No Federal funds may be used for the establishment or operation of a regional board required by subsection (a).

(20 U.S.C. 2994c)

SEC. 2020. PAYMENTS; FEDERAL SHARE; NON-FEDERAL SHARE.

(a) PAYMENTS.—The Secretary shall pay to each eligible entity having an application approved under section 2018 the Federal share of the cost of the activities described in the application.

(b) FEDERAL SHARE.—For purposes of subsection (a), the Federal share—

(1) for the first and second years in which an eligible entity receives assistance shall be 80 percent;

(2) for the third such year shall be 75 percent;

(3) for the fourth such year shall be 65 percent; and

(4) for the fifth and each such succeeding year shall be 50 percent.

(c) NON-FEDERAL SHARE.—The non-Federal share of the cost of activities described in the application submitted pursuant to this section may be in cash or in kind, fairly evaluated.

(20 U.S.C. 2994d)

SEC. 2021. EVALUATION.

(a) EVALUATION REQUIRED.—The Secretary, through the Office of Educational Research and Improvement, shall collect sufficient data on, and evaluate the effectiveness of, the activities of each regional consortium.

(b) ASSESSMENT.—The evaluations described in paragraph (1) shall include an assessment of the effectiveness of the regional consortium in meeting the needs of the schools, teachers, administrators and students in the region.

(c) REPORT.—At the end of each grant or contract period, the Secretary shall submit to Congress a report on the effectiveness of the programs conducted at each regional consortium.

(20 U.S.C. 2994e)

SEC. 2022. DEFINITIONS.

For purposes of this subpart:

(1) The term "eligible entity" means—

(A) a private nonprofit organization of demonstrated effectiveness;

(B) an institution of higher education;

(C) an elementary or secondary school;

(D) a State or local educational agency;

(E) a regional educational laboratory in consortium with the research and development center established under section 405(d)(4)(A) of the General Education Provisions Act; or

(F) any combination of the entities described in subparagraphs (A) through (E);

with demonstrated expertise in mathematics and science education.

(2) The term "region" means a region of the United States served by a regional education laboratory that is supported by the Secretary pursuant to section 405(d)(4)(A)(i) of the General Education Provisions Act.

(3) The term "regional consortium" means each regional mathematics and science education consortium established pursuant to section 2016.

(20 U.S.C. 2994f)

SEC. 2023. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the provisions of this subpart $17,000,000 for the fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(20 U.S.C. 2994g)

PART C—GENERAL PROVISIONS[1]

SEC. 2031. DEFINITIONS.

As used in this part:

(1) The term "institution of higher education" has the meaning given that term in section 1201(a) of the Higher Education Act of 1965.

(2) The term "State agency for higher education" means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or, if there is no such officer or agency, an officer or agency designated for the purpose of this title by the Governor or by State law.

(20 U.S.C. 2996)

PART B—FOREIGN LANGUAGES ASSISTANCE

SEC. 2101. SHORT TITLE.

This part may be cited as the "Foreign Language Assistance Act of 1988".

(20 U.S.C. 3001)

SEC. 2102. FINDINGS.

The Congress finds that the economic and security interests of this Nation require significant improvement in the quantity and quality of foreign language instruction offered in the Nation's elementary and secondary schools, and Federal funds should be made available to assist the purpose of this part.

(20 U.S.C. 3002)

SEC. 2103. PROGRAM AUTHORIZED.

(a) GENERAL AUTHORITY.—The Secretary shall make grants to State educational agencies whose applications are approved under subsection (b) to pay the Federal share of the cost of model programs, designed and operated by local educational agencies, providing for the commencement or improvement and expansion of foreign language study for students.

(b) APPLICATION.—Any State educational agency desiring to receive a grant under this part shall submit an application therefor to the Secretary at such time, in such form, and containing such information and assurances as the Secretary may require. No application may be approved by the Secretary unless the application—

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[1] So in law. Probably should be Subpart 3—Definitions. See P.L. 101-578, sec. 295(a)(2), 104 Stat. 2890.

(1) contains a description of model programs which—

(A) are designed by local educational agencies,

(B) represent a variety of alternative and innovative approaches to foreign language instruction, and

(C) are selected on a competitive basis by the State educational agency;

(2) provides assurances that all children aged 5 through 17 who reside within the school district of the local educational agency shall be eligible to participate in any model program funded under this section (without regard to whether such children attend schools operated by such agency);

(3) provides assurances that the State will pay the non-Federal share of the activities for which assistance is sought from non-Federal sources; and

(4) provides that the local educational agency will provide standard evaluations of the proficiency of participants at appropriate intervals .in the program which are reliable and valid, and provide such evaluations to the State educational agency.

(c) FEDERAL SHARE.—(1) The Federal share for each fiscal year shall be 50 percent.

(2) The Secretary may waive the requirement of paragraph (1) for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the project.

(d) PARTICIPATION OF PRIVATE SCHOOLS.—(1) To the extent consistent with the number of children in the State or in the school district of each local educational agency who are enrolled in private elementary and secondary schools, such State or agency shall, after consultation with appropriate private school representatives, make provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and which meet the requirements of this section. Expenditures for educational services and arrangements pursuant to this subsection for children in private schools shall be equal (taking into account the number of children to be served and the needs of such children) to expenditures for children enrolled in the public schools of the State or local educational agency.

(2) If by reason of any provision of law a State or local educational agency is prohibited from providing for the participation of children from private schools as required by paragraph (1), or if the Secretary determines that a State or local educational agency has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children which shall be subject to the requirements of this subsection. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with paragraphs (3) and (4) of section 1017(b) of this Act.

(20 U.S.C. 3003)

SEC. 2104. ALLOTMENTS.

(a) GENERAL RULE.—(1) From the sums appropriated to carry out this part in any fiscal year, the Secretary shall reserve 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, to be allotted in accordance with their respective needs.

(2) From the remainder of such sums the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the school age population of the State bears to the school age population of all States, except that no State shall receive less than an amount equal to one-half of 1 percent of such remainder.

(b) AVAILABILITY OF FUNDS.—The allotment of a State under subsection (a) shall be made available to the State for 2 additional years after the first fiscal year during which the State receives its allotment under this section if the Secretary determines that the funds made available to the State during the first such year were used in the manner required under the State's approved application.

(20 U.S.C. 3004)

SEC. 2105. DEFINITIONS.

(a) GENERAL RULE.—For the purpose of this part:

(1) The term "foreign language instruction" means instruction in critical foreign languages as defined by the Secretary.

(2) The term "institution of higher education" has the meaning given that term in section 1201(a) of the Higher Education Act of 1965.

(3) The term "State agency for higher education" means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or, if there is no such officer or agency, an officer or agency designated for the purpose of this title by the Governor or by State law.

(b) SPECIAL RULE.—For the purpose of section 2104—

(1) the term "school age population" means the population aged 5 through 17; and

(2) the term "States" includes the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(20 U.S.C. 3005)

SEC. 2106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $20,000,000 for the fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993 to carry out this part.

(20 U.S.C. 3006) Enacted April 28, 1988, P.L. 100–297, sec. 1001, 102 Stat. 230.

PART C—PRESIDENTIAL AWARDS FOR TEACHING EXCELLENCE IN FOREIGN LANGUAGES

SEC. 2201. PRESIDENTIAL AWARDS.

(a) GENERAL AUTHORITY.—The President is authorized to make Presidential Awards for Teaching Excellence in Foreign Languages to elementary and secondary school teachers of foreign languages who have demonstrated outstanding teaching ability in the field of teaching foreign languages.

(b) LIMITATIONS.— Each year the President is authorized to make 108 awards under subsection (a). In selecting elementary and secondary school teachers for an award authorized by this section, the President shall select at least one elementary school teacher and one secondary school teacher—

(1) from each of the several States;

(2) from the District of Columbia;

(3) from the Commonwealth of Puerto Rico;

(4) from among the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and other commonwealths, territories, and possessions of the United States; and

(5) from the United States Department of Defense Dependents' School.

(20 U.S.C. 3011)

SEC. 2202. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—There are authorized to be appropriated $1,000,000 for each fiscal year to carry out this part.

(b) AVAILABILITY.—Amounts appropriated pursuant to subsection (a) shall be available for making awards under this part, for administrative expenses, for necessary travel by teachers selected under this part, and for special activities related to carrying out this part.

(20 U.S.C. 3012)

TITLE III—MAGNET SCHOOLS ASSISTANCE

SEC. 3001. AUTHORIZATION OF APPROPRIATIONS; RESERVATION.

(a) AUTHORIZATION.—There are authorized to be appropriated $165,000,000 for the fiscal year 1989 and such sums as may be necessary for the fiscal years 1990 through 1993 to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS FOR GRANTS TO AGENCIES NOT PREVIOUSLY ASSISTED.—(1) In any fiscal year in which the amount appropriated pursuant to section 3001 exceeds $75,000,000, the Secretary shall, with respect to such excess amount, give priority to grants to local educational agencies which—

(A) meet the requirements of section 3002; and

(B) have not received a grant under title VII of the Education for Economic Security Act, or under this title, in the last fiscal year of the funding cycle prior to the fiscal year for which the determination is made.

(2) In awarding grants with the first $75,000,000, the Secretary shall not take into account, in whole or in title[1], whether a local educational agency has received an award in the prior funding cycle.

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[1] So in original. Probably should be "part".

(20 U.S.C. 3021)

SEC. 3002. ELIGIBILITY.

A local educational agency is eligible to receive assistance under this title if the local educational agency—

(1) is implementing a plan undertaken pursuant to a final order issued by a court of the United States, or a court of any State, or any other State agency or official of competent jurisdiction, and which requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency; or

(2) without having been required to do so, has adopted and is implementing, or will, if assistance is made available to it under this title, adopt and implement, a plan which has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 for the desegregation of minority group segregated children or faculty in such schools.

(20 U.S.C. 3022)

SEC. 3003. STATEMENT OF PURPOSE.

It is the purpose of this title to support, through financial assistance to eligible local educational agencies—

(1) the elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial portions of minority students; and

(2) courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the grasp of tangible and marketable vocational skills of students attending such schools.

(20 U.S.C. 3023)

SEC. 3004. PROGRAM AUTHORIZED.

The Secretary is authorized, in accordance with the provisions of this part[1], to make grants to eligible local educational agencies for use in magnet schools which are part of an approved desegregation plan and which are designed to bring students from different social, economic, ethnic, and racial backgrounds together.

(20 U.S.C. 3024)

SEC. 3005. DEFINITION.

For the purpose of this title, the term "magnet school" means a school or education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

(20 U.S.C. 3025)

SEC. 3006. USES OF FUNDS.

Grants made under this title may be used by eligible local educational agencies for—

(1) planning and promotional activities directly related to expansion, continuation, or enhancement of academic programs and services offered at magnet schools;

(2) the acquisition of books, materials, and equipment, including computers and the maintenance and operation thereof, necessary for the conduct of programs in magnet schools; and

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[1] So in original. Probably should be "this title".

(3) the payment of or subsidization of the compensation of elementary and secondary school teachers who are certified or licensed by the State and who are necessary for the conduct of programs in magnet schools;

where, with respect to clauses (2) and (3), such assistance is directly related to improving the knowledge of mathematics, science, history, English, foreign languages, art, or music, or to improving vocational skills.

(20 U.S.C. 3026)

SEC. 3007. APPLICATIONS AND REQUIREMENTS.

(a) APPLICATION.—Each eligible local educational agency which desires to receive assistance under this title shall submit an application to the Secretary. Each such application shall be in such form as the Secretary may reasonably require. Each such application shall contain assurances that the local educational agency will meet the conditions enumerated in subsection (b).

(b) REQUIREMENTS CERTIFIED.—As part of the annual application required by subsection (a), each eligible local educational agency shall certify that the agency agrees—

(1) to use funds made available under this title for the purposes specified in section 3003;

(2) to employ teachers in the courses of instruction assisted under this title who are certified or licensed by the State to teach the subject matter of the courses of instruction;

(3) to provide assurances that the local educational agency will not engage in discrimination based upon race, religion, color, national origin, sex, or handicap in the hiring, promotion, or assignment of employees of the agency or other personnel for whom the agency has any administrative responsibility;

(4) to provide assurances that the local educational agency will not engage in discrimination based upon race, religion, color, national origin, sex, or handicap in the mandatory assignment of students to schools or to courses of instruction within schools of such agency except to carry out the approved plan;

(5) to provide assurances that the local educational agency will not engage in discrimination based upon race, religion, color, national origin, sex, or handicap in designing or operating extracurricular activities for students;

(6) to describe how assistance made available under this title will be used to promote desegregation;

(7) to provide assurances that the agency will carry out a high quality education program that will encourage greater parental decisionmaking and involvement;

(8) to provide a description of the manner in which the local educational agency will continue the magnet schools program after assistance under this title is no longer available; and

(9) to provide such other assurances as the Secretary determines necessary to carry out the provisions of this title.

(c) SPECIAL RULE.—No application may be approved under this section unless the Assistant Secretary of Education for Civil Rights determines that the assurances described in clauses (3), (4), and (5) of subsection (b) will be met.

(20 U.S.C. 3027)

SEC. 3008. SPECIAL CONSIDERATION.

(a) PRIORITY.—In approving applications under this title the Secretary shall give priority to—

(1) the recentness of the implementation of the approved plan or modification thereof;

(2) the proportion of minority group children involved in any approved plan;

(3) the need for assistance based on the expense or difficulty of effectively carrying out an approved plan and the program or projects for which assistance is sought; and

(4) the degree to which the program or project for which assistance is sought affords promise of achieving the purposes of this title.

(b) SPECIAL CONSIDERATION.—In approving applications under this title, the Secretary shall give special consideration to the degree to which the program for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, the appropriate State educational agency, or any other private organization.

(20 U.S.C. 3028)

SEC. 3009. PROHIBITIONS.

Grants under this title may not be used for consultants, for transportation, or for any activity which does not augment academic improvement.

(20 U.S.C. 3029)

SEC. 3010. LIMITATION ON PAYMENTS.

(a) LIMITATION ON DURATION AND PROGRESS.—No local educational agency may receive a grant under this title for more than one fiscal year unless the Secretary determines that the program for which assistance was provided in the first fiscal year is making satisfactory progress in achieving the purposes of this title.

(b) LIMITATION ON PLANNING FUNDS.—No local educational agency may expend more than 10 percent of the amount that the agency receives in any fiscal year for planning.

(c) SPECIAL RULE ON CHAPTER 2 FUNDS.—No State shall reduce the amount of State aid with respect to the provision of free public education or the amount of assistance received under chapter 2 of title I of this Act in any school district of any local educational agency within such State because of assistance made or to be made available to such agency under this title.

(20 U.S.C. 3030)

SEC. 3011. PAYMENTS.

(a) GENERAL RULE.—(1) The Secretary shall pay to each local educational agency having an application approved under this title the amount set forth in the application.

(2) Notwithstanding section 412 of the General Education Provisions Act, not more than 15 percent of funds available for each fiscal year for the purposes of this title may remain available to

local educational agencies for obligation and expenditure during the succeeding fiscal year pursuant to such section. The provisions of this subsection shall not apply if grants are not awarded in a timely manner.

(3) The Secretary may not reduce any payment under this title for any fiscal year by any amount on the basis of the availability of funds pursuant to sections[1] 412 (b) and (c) of the General Education Provisions Act.

(4) Payments under this title for a fiscal year shall remain available for obligation and expenditure by the recipient until the end of the succeeding fiscal year, except that no such agency shall receive more than $4,000,000 under this title in any one grant cycle.

(b) AWARD REQUIREMENT.—To the extent practicable, for any fiscal year, the Secretary shall award grants to local educational agencies under this title no later than June 30 of the applicable fiscal year.

(20 U.S.C. 3031)

SEC. 3012. WITHHOLDING.

The provisions of sections 453 and 454 of the General Education Provisions Act, relating to withholding and cease and desist orders, shall apply to the program authorized by this title.

(20 U.S.C. 3032)

TITLE IV—SPECIAL PROGRAMS

PART A—WOMEN'S EDUCATIONAL EQUITY

SEC. 4001. SHORT TITLE; FINDINGS AND STATEMENT OF PURPOSE.

(a) SHORT TITLE.—This part may be cited as the "Women's Educational Equity Act".

(b) FINDINGS AND STATEMENT OF PURPOSE.—(1) The Congress finds and declares that educational programs in the United States, as presently conducted, are frequently inequitable as such programs relate to women and frequently limit the full participation of all individuals in American society. The Congress finds and declares that excellence in education cannot be achieved without equity for women and girls.

(2) It is the purpose of this part to provide educational equity for women in the United States and to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Education Amendments of 1972. It is also the purpose of this part to provide educational equity for women and girls who suffer multiple discrimination, bias, or stereotyping based on sex and on race, ethnic origin, disability, or age.

(20 U.S.C. 3041)

SEC. 4002. PROGRAM AUTHORIZED.

(a) AUTHORIZATION.—The Secretary is authorized to make grants to, and enter into contracts with, public agencies, private nonprofit agencies, organizations, and institutions, including student and community groups, and individuals, for activities designed to achieve the purpose of this part at all levels of education, including preschool, elementary and secondary education, higher education, and adult education. The activities may include—

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[1] So in original. Probably should be "section".

(1) demonstration, developmental, and dissemination activities of national, statewide, or general significance, including—

(A) the development, where such materials are commercially unavailable, and evaluation of curricula, textbooks, and other educational materials related to educational equity;

(B) model preservice and inservice training programs for educational personnel with special emphasis on programs and activities designed to provide educational equity;

(C) research and development activities designed to advance educational equity;

(D) guidance and counseling activities, including the development of nondiscriminatory tests, designed to ensure educational equity;

(E) educational activities to increase opportunities for adult women, including continuing educational activities and programs for underemployed and unemployed women; and

(F) the expansion and improvement of educational programs and activities for women in vocational education, career education, physical education, and educational administration; and

(2) assistance to eligible entities to pay a portion of the costs of the establishment and operation, for a period of not to exceed 2 years, of special programs and projects of local significance to provide equal opportunities for both sexes, including activities listed in paragraph (1), activities incident to achieving compliance with title IX of the Education Amendments of 1972 and other special activities designed to achieve the purposes of this part.

Not less than 75 percent of funds used to support activities described by paragraph (2) shall be used for awards to local educational agencies. The Secretary shall ensure that at least 1 grant or contract is available during each fiscal year for the performance of each of the activities described in paragraph (1) of this subsection.

(b) LIMITATION.—For each fiscal year, the Secretary shall use $4,500,000 from the funds available under this part to support activities described in paragraph (1) of subsection (a). Any funds in excess of $4,500,000 available under this part may be used to support new activities described in paragraph (1) or to support activities described in paragraph (2), or both.

(20 U.S.C. 3042)

SEC. 4003. APPLICATION; PARTICIPATION.

(a) APPLICATION.—A grant may be made, and a contract may be entered into, under this part only upon application to the Secretary, at such time, in such form, and containing or accompanied by such information as the Secretary may prescribe. Each such application shall—

(1) provide that the program or activity for which assistance is sought will be administered by or under the supervision of the applicant;

(2) describe a program for carrying out one or more of the purposes set forth in section 4001(b) which holds promise of making a substantial contribution toward attaining such purposes; and

(3) set forth policies and procedures which insure[1] adequate evaluation of the activities intended to be carried out under the application, including where appropriate an evaluation or estimate of the potential for continued significance following completion of the grant period.

(b) SPECIAL RULE.—In approving applications under this part, the Secretary shall give special consideration to—

(1) applications submitted by applicants that have not received assistance under this part or under part C of title IX of the Elementary and Secondary Education Act of 1965 (as in effect prior to October 1, 1988); and

(2) proposals from applicants on the basis of geographic distribution throughout the United States.

(c) LIMITATION.—Nothing in this part shall be construed as prohibiting men and boys from participating in any programs or activities assisted under this part.

(20 U.S.C. 3043)

SEC. 4004. CHALLENGE GRANTS.

(a) PURPOSE.—In addition to the authority of the Secretary under section 4002, the Secretary shall carry out a program of challenge grants (as part of the grant program administered under section 4002(a)(1)), not to exceed $40,000 each, in order to support projects to develop—

(1) comprehensive plans for implementation of equity programs at every educational level;

(2) innovative approaches to school-community partnerships;

(3) new dissemination and replication strategies; and

(4) other innovative approaches to achieving the purposes of this part.

(b) GRANT RECIPIENTS.—For the purpose described in paragraphs (1) through (4) of subsection (a), the Secretary is authorized to make grants to public agencies and private nonprofit organizations and consortia of these groups and to individuals.

(20 U.S.C. 3044)

SEC. 4005. CRITERIA AND PRIORITIES.

The Secretary shall establish separate criteria and priorities for awards under sections 4002(a)(1) and 4002(a)(2) under this part to insure[1] that available funds are used for programs that most effectively will achieve the purposes of this part. The criteria and priorities shall be promulgated in accordance with section 431 of the General Education Provisions Act.

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[1] So in original. Probably should be "ensure".

[1] So in original. Probably should be "ensure".

(20 U.S.C. 3045)

SEC. 4006. REPORTS, EVALUATION, AND DISSEMINATION.

(a) REPORTS.—The Secretary shall, from funds authorized under this part, not later than September 30, 1992, submit to the President and the Congress a report setting forth the programs and activities assisted under this part, and provide for the distribution of this report.

(b) EVALUATION AND DISSEMINATION.—The Secretary, through the Office of Educational Research and Improvement, shall evaluate and disseminate (at low cost) materials and programs developed under this part.

(20 U.S.C. 3046)

SEC. 4007. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $9,000,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993, to carry out the provisions of this part.

(20 U.S.C. 3047)

PART B—GIFTED AND TALENTED CHILDREN

SEC. 4101. SHORT TITLE.

This part may be referred to as the "Jacob K. Javits Gifted and Talented Students Education Act of 1988".

(20 U.S.C. 3061)

SEC. 4102. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds and declares that—

(1) gifted and talented students are a national resource vital to the future of the Nation and its security and wellbeing;

(2) unless the special abilities of gifted and talented students are recognized and developed during their elementary and secondary school years, much of their special potential for contributing to the national interest is likely to be lost;

(3) gifted and talented students from economically disadvantaged families and areas, and students of limited English proficiency are at greatest risk of being unrecognized and of not being provided adequate or appropriate educational services;

(4) State and local educational agencies and private nonprofit schools often lack the necessary specialized resources to plan and implement effective programs for the early identification of gifted and talented students for the provision of educational services and programs appropriate to their special needs; and

(5) the Federal Government can best carry out the limited but essential role of stimulating research and development and personnel training, and providing a national focal point of information and technical assistance, that is necessary to ensure that our Nation's schools are able to meet the special edu-

cational needs of gifted and talented students, and thereby serve a profound national interest.

(b) STATEMENT OF PURPOSE.—It is the purpose of this part to provide financial assistance to State and local educational agencies, institutions of higher education, and other public and private agencies and organizations, to initiate a coordinated program of research, demonstration projects, personnel training, and similar activities designed to build a nationwide capability in elementary and secondary schools to identify and meet the special educational needs of gifted and talented students. It is also the purpose of this part to supplement and make more effective the expenditure of State and local funds, and of Federal funds made available under chapter 2 of title I of this Act and title II of this Act, for the education of gifted and talented students.

(20 U.S.C. 3062)

SEC. 4103. DEFINITIONS.

For the purposes of this part:

(1) The term "gifted and talented students" means children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.

(2) The term "institution of higher education" has the same meaning given such term in section 435(b)[1] of the Higher Education Act of 1965.

(3) The term "Hawaiian native" means any individual any of whose ancestors were natives prior to 1778 of the area which now comprises the State of Hawaii.

(4) The term "Hawaiian native organization" means any organization recognized by the Governor of the State of Hawaii primarily serving and representing Hawaiian natives.

(20 U.S.C. 3063)

SEC. 4104. AUTHORIZED PROGRAMS.

(a) ESTABLISHMENT OF PROGRAM.—From the sums appropriated under section 4108 in any fiscal year the Secretary (after consultation with experts in the field of the education of gifted and talented students) shall make grants to or enter into contracts with State educational agencies, local educational agencies, institutions of higher education, or other public agencies and private agencies and organizations (including Indian tribes and organizations as defined by the Indian Self-Determination and Education Assistance Act and Hawaiian native organizations) to assist such agencies, institutions, and organizations which submit applications in carrying out programs or projects authorized by this Act that are designed to meet the educational needs of gifted and talented students, including the training of personnel in the education of gifted and talented students or in supervising such personnel.

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[1] Subsection (b) of section 435 of the Higher Education Act of 1965 was repealed by section 427(b)(1) of P.L. 102–325 (106 Stat. 549). Section 427(b)(2) of P.L. 102–325 provided any reference to section 435(b) of the Higher Education Act of 1965 shall be deemed to refer to section 481(a) of that Act.

(b) USES OF FUNDS.—Programs and projects assisted under this section may include—

(1) preservice and inservice training (including fellowships) for personnel (including leadership personnel) involved in the education of gifted and talented students;

(2) establishment and operation of model projects and exemplary programs for the identification and education of gifted and talented students, including summer programs and cooperative programs involving business, industry, and education;

(3) strengthening the capability of State educational agencies and institutions of higher education to provide leadership and assistance to local educational agencies and nonprofit private schools in the planning, operation, and improvement of programs for the identification and education of gifted and talented students;

(4) programs of technical assistance and information dissemination; and

(5) carrying out (through the National Center for Research and Development in the Education of Gifted and Talented Children and Youth established pursuant to subsection (c))—

(A) research on methods and techniques for identifying and teaching gifted and talented students, and

(B) program evaluations, surveys, and the collection, analysis, and development of information needed to accomplish the purposes of this part.

(c) ESTABLISHMENT OF NATIONAL CENTER.—The Secretary (after consultation with experts in the field of the education of gifted and talented students) shall establish a National Center for Research and Development in the Education of Gifted and Talented Children and Youth through grants to or contracts with one or more institutions of higher education or State educational agencies, or a combination or consortium of such institutions and agencies, for the purpose of carrying out clause (5) of subsection (b). Such National Center shall have a Director. The Secretary may authorize the Director to carry out such functions of the National Center as may be agreed upon through arrangements with other institutions of higher education, State or local educational agencies, or other public or private agencies and organizations.

(d) LIMITATION.—Not more than 30 percent of the funds available in any fiscal year to carry out the programs and projects authorized by this section may be used for the conduct of activities pursuant to subsections (b)(5) or (c).

(20 U.S.C. 3064)

SEC. 4105. PROGRAM PRIORITIES.

(a) GENERAL PRIORITY.—In the administration of this part the Secretary shall give highest priority—

(1) to the identification of gifted and talented students who may not be identified through traditional assessment methods (including economically disadvantaged individuals, individuals of limited English proficiency, and individuals with handicaps) and to education programs designed to include gifted and talented students from such groups; and

(2) to programs and projects designed to develop or improve the capability of schools in an entire State or region of the Nation through cooperative efforts and participation of State and local educational agencies, institutions of higher education, and other public and private agencies and organizations (including business, industry, and labor), to plan, conduct, and improve programs for the identification and education of gifted and talented students.

(b) SERVICE PRIORITY.—In approving applications under section 4104(a) of this part, the Secretary shall assure that in each fiscal year at least one-half of the applications approved contain a component designed to serve gifted and talented students who are economically disadvantaged individuals.

(20 U.S.C. 3065)

SEC. 4106. PARTICIPATION OF PRIVATE SCHOOL CHILDREN AND TEACHERS.

In making grants and entering into contracts under this Act, the Secretary shall ensure, where appropriate, that provision is made for the equitable participation of students and teachers in private nonprofit elementary and secondary schools, including the participation of teachers and other personnel in preservice and inservice training programs for serving such children.

(20 U.S.C. 3066)

SEC. 4107. ADMINISTRATION.

The Secretary shall establish or designate an administrative unit within the Department of Education—

(1) to administer the programs authorized by this part,

(2) to coordinate all programs for gifted and talented students administered by the Department, and

(3) to serve as a focal point of national leadership and information on the educational needs of gifted and talented students and the availability of educational services and programs designed to meet those needs.

The administrative unit established or designated pursuant to this section shall be headed by a person of recognized professional qualifications and experience in the field of the education of gifted and talented students.

(20 U.S.C. 3067)

SEC. 4108. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $20,000,000 for the fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993, to carry out the provisions of this part.

(20 U.S.C. 3068)

PART C—ALLEN J. ELLENDER FELLOWSHIP PROGRAM

SEC. 4301. FINDINGS.

The Congress makes the following findings:

(1) Allen J. Ellender, a Senator from Louisiana and President pro tempore of the United States Senate, had a distinguished career in public service characterized by extraordinary

energy and real concern for young people and the development of greater opportunities for active and responsible citizenship by young people.

(2) Senator Ellender provided valuable support and encouragement to the Close Up Foundation, a nonpartisan, nonprofit foundation promoting knowledge and understanding of the Federal Government among young people and their educators.

(3) It is a fitting and appropriate tribute to the beloved Senator Ellender to provide in his name an opportunity for participation, by students of limited economic means and by their teachers, in the program supported by the Close Up Foundation.

(20 U.S.C. 3081)

Subpart 1—Program for Secondary School Students and Teachers

SEC. 4311. ESTABLISHMENT.

(a) GENERAL AUTHORITY.—The Secretary is authorized to make grants in accordance with the provisions of this subpart to the Close Up Foundation of Washington, District of Columbia, a nonpartisan, nonprofit foundation, for the purpose of assisting the Close Up Foundation in carrying out its program of increasing understanding of the Federal Government among secondary school students, their teachers, and the communities they represent.

(b) USE OF FUNDS.—Grants under this subpart shall be used only for financial assistance to economically disadvantaged students and their teachers who participate in the program described in subsection (a) of this section. Financial assistance received pursuant to this subpart by such students and teachers shall be known as Allen J. Ellender fellowships.

(20 U.S.C. 3091)

SEC. 4312. APPLICATIONS.

(a) APPLICATION REQUIRED.—No grant under this subpart may be made except upon an application at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(b) CONTENTS OF APPLICATION.—Each such application shall contain provisions to assure—

(1) that fellowship grants are made to economically disadvantaged secondary school students, and to secondary school teachers;

(2) that not more than 1 secondary school teacher in each such school participating in the program may receive a fellowship grant in any fiscal year;

(3) that every effort will be made to ensure the participation of students and teachers from rural and small town areas, as well as from urban areas, and that in awarding fellowships to economically disadvantaged students, special consideration will be given to the participation of students with special educational needs, including handicapped students, students from recent immigrant families, ethnic minority students, gifted and talented students, and students of migrant parents; and

(4) the proper disbursement of the funds of the United States received under this part.

(20 U.S.C. 3092)

Subpart 2—Programs for Older Americans and Recent Immigrants

SEC. 4321. ESTABLISHMENT.

(a) GENERAL AUTHORITY.—(1) The Secretary is authorized to make grants in accordance with the provisions of this subpart to the Close Up Foundation of Washington, District of Columbia, a nonpartisan, nonprofit foundation, for the purpose of assisting the Close Up Foundation in carrying out its programs of increasing understanding of the Federal Government among economically disadvantaged older Americans and recent immigrants.

(2) For the purpose of this subpart, the term "older American" means an individual who has attained 55 years of age.

(b) USE OF FUNDS.—Grants under this subpart shall be used only for financial assistance to economically disadvantaged older Americans and recent immigrants who participate in the program described in subsection (a) of this section. Financial assistance received pursuant to this subpart by such individuals shall be known as Allen J. Ellender fellowships.

(20 U.S.C. 3101)

SEC. 4322. APPLICATIONS.

(a) APPLICATION REQUIRED.—No grant under this subpart may be made except upon application at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(b) CONTENTS OF APPLICATION.—Each such application shall contain provisions to assure—

(1) that fellowship grants are made to economically disadvantaged older Americans and recent immigrants;

(2) that every effort will be made to ensure the participation of older Americans and recent immigrants from rural and small town areas, as well as from urban areas, and that in awarding fellowships, special consideration will be given to the participation of older Americans and recent immigrants with special needs, including handicapped individuals and ethnic minorities;

(3) that activities permitted by section 4321 are fully described; and

(4) the proper disbursement of the funds of the United States received under this part.

(20 U.S.C. 3102)

Subpart 3—General Provisions

SEC. 4331. ADMINISTRATIVE PROVISIONS.

(a) GENERAL RULE.—Payments under this part may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of underpayment or overpayment.

(b) AUDIT RULE.—The Comptroller General of the United States or any of the Comptroller General's duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to any grant under this part.

(20 U.S.C. 3111)

SEC. 4332. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION FOR SUBPART 1.—There are authorized to be appropriated to carry out the provisions of subpart 1 of this part $3,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 through 1993.

(b) AUTHORIZATION FOR SUBPART 2.—(1) There are authorized to be appropriated to carry out the provisions of subpart 2 of this part $2,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 through 1993.

(2) No funds may be appropriated pursuant to paragraph (1) for the fiscal year 1989 unless amounts appropriated pursuant to subsection (a) for such fiscal year total not less than $2,500,000. In each of the fiscal years 1990 through 1993, no funds may be appropriated pursuant to paragraph (1) unless sufficient amounts are appropriated pursuant to subsection (a) for the fiscal year to carry out activities under subpart 1 of this part at the level established during the fiscal year 1989.

(20 U.S.C. 3112)

PART D—IMMIGRANT EDUCATION

SEC. 4401. SHORT TITLE.

This part may be cited as the "Emergency Immigrant Education Act of 1984".

(20 U.S.C. 3121)

SEC. 4402. DEFINITIONS.

As used in this part—

(1) The term "immigrant children" means children who were not born in any State and who have been attending schools in any 1 or more States for less than 3 complete academic years.

(2) The term "elementary or secondary nonpublic schools" means schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

(20 U.S.C. 3122)

SEC. 4403. AUTHORIZATIONS AND ALLOCATION OF APPROPRIATIONS.

(a) AUTHORIZATIONS OF APPROPRIATIONS.—There are authorized to be appropriated to make payments to which State educational agencies are entitled under this part and payments for administration under section 4404 $30,000,000 for the fiscal year 1985, $40,000,000 for each of the fiscal years 1986, 1987, 1988, and 1989, and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993.

(b) ALLOCATION OF APPROPRIATIONS.—(1) If the sums appropriated for any fiscal year to make payments to States under this part are not sufficient to pay in full the sum of the amounts which

State educational agencies are entitled to receive under this part for such year, the allocations to State educational agencies shall be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amounts so appropriated.

(2) In the event that funds become available for making payments under this part for any period after allocations have been made under paragraph (1) of this subsection for such period, the amounts reduced under such paragraph shall be increased on the same basis as they were reduced.

(20 U.S.C. 3123)

SEC. 4404. STATE ADMINISTRATIVE COSTS.

The Secretary is authorized to pay to each State educational agency amounts equal to the amounts expended by it for the proper and efficient administration of its functions under this part, except that the total of such payments for any period shall not exceed 1.5 per centum of the amounts which that State educational agency is entitled to receive for that period under this part.

(20 U.S.C. 3124)

SEC. 4405. WITHHOLDING.

Whenever the Secretary, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there is a failure to meet the requirements of any provision of this part, the Secretary shall notify that agency that further payments will not be made to the agency under this part, or in the discretion of the Secretary, that the State educational agency shall not make further payments under this part to specified local educational agencies whose actions cause or are involved in such failure until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, no further payments shall be made to the State educational agency under this part, or payments by the State educational agency under this part shall be limited to local educational agencies whose actions did not cause or were not involved in the failure, as the case may be.

(20 U.S.C. 3125)

SEC. 4406. STATE ENTITLEMENTS.

(a) PAYMENTS.—The Secretary shall, in accordance with the provisions of this section, make payments to State educational agencies for each of the fiscal years 1985 through 1993 for the purpose set forth in section 4407.

(b) ENTITLEMENTS.—(1) Except as provided in paragraph (3) and in subsections (c) and (d) of this section, the amount of the grant to which a State educational agency is entitled under this part shall be equal to the product of (A) the number of immigrant children enrolled during such fiscal year in elementary and secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, and in any elementary or secondary nonpublic school within the district served by each such local educational agency, multiplied by (B) $500.

(2) The local educational agencies referred to in paragraph (1) are those local educational agencies in which the sum of the number of immigrant children who are enrolled in elementary or secondary public schools under the jurisdiction of such agencies, and

in elementary or secondary nonpublic schools within the districts served by such agencies, during the fiscal year for which the payments are to be made under this part, is equal to—

(A) at least 500; or

(B) at least 3 percent of the total number of students enrolled in such public or nonpublic schools during such fiscal year;

whichever number is less.

(3)(A) The amount of the grant of any State educational agency for any fiscal year as determined under paragraph (1) shall be reduced by the amounts made available for such fiscal year under any other Federal law for expenditure within the State for the same purpose as those for which funds are available under this part, but such reduction shall be made only to the extent that (i) such amounts are made available for such purpose specifically because of the refugee, parollee, asylee, or other immigrant status of the individuals served by such funds, and (ii) such amounts are made available to provide assistance to individuals eligible for services under this part.

(B) No reduction of a grant under this part shall be made under subparagraph (A) for any fiscal year if a reduction is made, pursuant to a comparable provision in any such other Federal law, in the amount made available for expenditure in the State for such fiscal year under such other Federal law, based on the amount assumed to be available under this part.

(c) DETERMINATIONS OF NUMBER OF CHILDREN.—(1) Determinations by the Secretary under this section for any period with respect to the number of immigrant children shall be made on the basis of data or estimates provided to the Secretary by each State educational agency in accordance with criteria established by the Secretary, unless the Secretary determines, after notice and opportunity for a hearing to the affected State educational agency, that such data or estimates are clearly erroneous.

(2) No such determination with respect to the number of immigrant children shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this section to which such agency would be entitled had such determination been made on the basis of accurate data.

(d) REALLOCATION.—Whenever the Secretary determines that any amount of a payment made to a State under this part for a fiscal year will not be used by such State for carrying out the purpose for which the payment was made, the Secretary shall make such amount available for carrying out such purpose to 1 or more other States to the extent the Secretary determines that such other States will be able to use such additional amount for carrying out such purpose. Any amount made available to a State from an appropriation for a fiscal year in accordance with the preceding sentence shall, for purposes of this part, be regarded as part of such State's payment (as determined under subsection (b)) for such year, but shall remain available until the end of the succeeding fiscal year.

(20 U.S.C. 3126)

SEC. 4407. USES OF FUNDS.

(a) SUPPLEMENTARY EDUCATIONAL SERVICES AND COSTS.—Payments made under this part to any State may be used in accordance with applications approved under section 4408 for supplementary educational services and costs, as described under subsection (b) of this section, for immigrant children enrolled in the elementary and secondary public schools under the jurisdiction of the local educational agencies of the State described in section 4406(b)(2) and in elementary and secondary nonpublic schools of that State within the districts served by such agencies.

(b) KINDS OF SERVICES AND COSTS.—Financial assistance provided under this part shall be available to meet the costs of providing immigrant children supplementary educational services, including but not limited to—

(1) supplementary educational services necessary to enable those children to achieve a satisfactory level of performance, including—

(A) English language instruction;

(B) other bilingual educational services; and

(C) special materials and supplies;

(2) additional basic instructional services which are directly attributable to the presence in the school district of immigrant children, including the costs of providing additional classroom supplies, overhead costs, costs of construction, acquisition or rental of space, costs of transportation, or such other costs as are directly attributable to such additional basic instructional services; and

(3) essential inservice training for personnel who will be providing instruction described in either paragraph (1) or (2) of this subsection.

(20 U.S.C. 3127)

SEC. 4408. APPLICATIONS.

(a) SUBMISSION.—No State educational agency shall be entitled to any payment under this part for any period unless that agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

(1) provide that the educational programs, services, and activities for which payments under this part are made will be administered by or under the supervision of the agency;

(2) provide assurances that payments under this part will be used for purposes set forth in section 4407;

(3) provide assurances that such payments will be distributed among local educational agencies within that State on the basis of the number of children counted with respect to such local educational agency under section 4406(b)(1), adjusted to reflect any reductions imposed pursuant to section 4406(b)(3) which are attributable to such local educational agency;

(4) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this part without first affording the

local educational agency submitting an application for such funds reasonable notice and opportunity for a hearing;

(5) provide for making such reports as the Secretary may reasonably require to perform the functions under this part; and

(6) provide assurances—

(A) that to the extent consistent with the number of immigrant children enrolled in the elementary or secondary nonpublic schools within the district served by a local educational agency, such agency, after consultation with appropriate officials of such schools, shall provide for the benefit of these children secular, neutral, and nonideological services, materials, and equipment necessary for the education of such children;

(B) that the control of funds provided under this part and title to any materials, equipment, and property repaired, remodeled, or constructed with those funds shall be in a public agency for the uses and purposes provided in this part, and a public agency shall administer such funds and property; and

(C) that the provision of services pursuant to this paragraph shall be provided by employees of a public agency or through contract by such public agency with a person, association, agency, or corporation who or which, in the provision of such services, is independent of such elementary or secondary nonpublic school and of any religious organization; and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this paragraph shall not be commingled with State or local funds.

(b) APPROVAL OF APPLICATION.—The Secretary shall approve an application which meets the requirements of subsection (a). The Secretary shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

(20 U.S.C. 3128)

SEC. 4409. PAYMENTS.

(a) AMOUNT.—Except as provided in section 4403(b), the Secretary shall pay to each State educational agency having an application approved under section 4408 the amount which that State is entitled to receive under this part.

(b) SERVICES TO CHILDREN ENROLLED IN NONPUBLIC SCHOOLS.—If by reason of any provision of law a local educational agency is prohibited from providing educational services for children enrolled in elementary and secondary nonpublic schools, as required by section 4408(a)(6), or if the Secretary determines that a local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in such schools, the Secretary may waive such requirement and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this part. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with the provisions of chapter 1 of title I.

(20 U.S.C. 3129)

SEC. 4410. REPORTS.

(a) BIENNIAL REPORT.—Each State educational agency receiving funds under this part shall submit, biennially, a report to the Secretary concerning the expenditure of funds by local educational agencies under this part. Each local educational agency receiving funds under this part shall submit to the State educational agency such information as may be necessary for such report.

(b) REPORT TO CONGRESS.—The Secretary shall submit biannually a report to the appropriate committees of the Congress concerning programs under this part.

(20 U.S.C. 3130)

PART E—TERRITORIAL ASSISTANCE

SEC. 4501. GENERAL ASSISTANCE FOR THE VIRGIN ISLANDS.

There are authorized to be appropriated $5,000,000 for the fiscal year 1989 and for each of the 4 subsequent fiscal years, for the purpose of providing general assistance to improve public education in the Virgin Islands.

(20 U.S.C. 3141)

SEC. 4502. TERRITORIAL TEACHER TRAINING ASSISTANCE.

There are authorized to be appropriated $2,000,000 for the fiscal year 1989 and for each of the 4 subsequent fiscal years for the purpose of assisting teacher training programs in Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia..[1] From the sums appropriated pursuant to this section the Secretary shall make grants and enter into contracts for the purpose of providing training to teachers in schools in Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia..[1] The Secretary may make grants to or contracts with any organization considered qualified to provide training for teachers in such schools and shall allot such sums among such territories on the basis of the need for such training.

(20 U.S.C. 3142)

PART F—SECRETARY'S FUND FOR INNOVATION IN EDUCATION

SEC. 4601. PROGRAM AUTHORIZED.

(a) GENERAL AUTHORITY.—(1) From funds appropriated under this part, the Secretary is authorized to carry out programs and projects which show promise of identifying and disseminating innovative educational approaches.

(2) The Secretary, in carrying out the provisions of this part, is authorized to—

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[1] So in original.

(A) develop, prepare, and conduct an optional test for academic excellence in accordance with section 4602;

(B) carry out programs for technology education in accordance with section 4603;

(C) strengthen and expand computer education resources available in public and private elementary and secondary schools in accordance with section 4604; and

(D) establish and strengthen comprehensive school health education programs in accordance with section 4605.

(b) ADMINISTRATIVE AUTHORITY.—The Secretary is authorized to carry out programs and projects under this section directly, or through grants to or contracts with State and local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions.

(20 U.S.C. 3151)

SEC. 4602. OPTIONAL TESTS FOR ACADEMIC EXCELLENCE.

(a) TEST OF ACADEMIC EXCELLENCE AUTHORIZED.—The Secretary is authorized, after consultation with appropriate State and local educational agencies and public and private organizations, to approve comprehensive tests of academic excellence or to develop such a test where commercially unavailable, to be administered to identify outstanding students who are in the eleventh grade of public and private secondary schools.

(b) PREPARATION AND CONDUCT OF TESTS.—(1) The Secretary is authorized to establish a program through arrangements with appropriate State educational agencies, local educational agencies, public and private secondary schools, and public and private organizations throughout the Nation, under which the tests of academic excellence prepared or approved under this part may be given by such agencies or schools, on a voluntary basis, to students described in this section. The tests of academic excellence shall be tests of acquired skills and knowledge appropriate for the completion of a secondary school education. Such students may file applications for the test at such time and in such manner as the Secretary may prescribe. Upon application by any appropriate agency or school by such time and in such manner as the Secretary may determine, the Secretary shall pay to such agency or school the cost of the administrative expenses it has incurred pursuant to an arrangement made under this section.

(2) The Secretary shall assure that the tests authorized by this part are conducted in a secure manner, and that test items remain confidential so that such items may be used in future tests.

(c) CERTIFICATE.—(1) The Secretary is authorized and directed to prepare a certificate, of such appropriate design as the Secretary shall prescribe, and in such numbers as are necessary, for issuance to students who have scored at a sufficiently high level, as determined by the Secretary, on a test of academic excellence prepared or approved under this subpart and given in accordance with arrangements made under this section. Each such student shall be awarded a certificate within 60 days following the date on which the student was given the test.

(2) Each certificate awarded pursuant to this section shall be signed by the Secretary.

(d) REPORT.—The Secretary shall prepare and submit to the Congress a report on the estimated costs of administering, scoring, and analyzing the tests of academic excellence prepared or approved under this subpart[1].

(20 U.S.C. 3152)

SEC. 4603. TECHNOLOGY EDUCATION.

(a) GENERAL AUTHORITY.—The Secretary is authorized to develop materials for educational television and radio programming for use in elementary and secondary education, together with programs which use telecommunications and video resources for the instruction of public and private elementary and secondary school students and for related teacher training programs for public and private elementary and secondary school teachers.

(b) USES OF FUNDS.—Funds available to carry out this section may be used for—

(1) programs and projects which use such technology to address specifically the educational needs in critical subject matter areas;

(2) programs and projects to assist in the training of public and private elementary and secondary school teachers, administrators, and other educational personnel to use in the schools of such television programming, radio programming, telecommunications programs, or video resources, or in the coordination of such technology with the school curriculum; or

(3) educational television, educational radio, telecommunications or video resources programs or projects which promote a partnership between elementary and secondary schools, the parents of elementary and secondary students, State educational agencies, and institutions of higher education or the community in which such schools are located.

(c) DEFINITION.—For the purpose of this section the term "telecommunications" means the full range of technologies that can be used for educational instruction, including closed circuit television systems, educational television and radio broadcasting, cable television, satellite transmission, computer laser discs, and video and audio discs and tapes.

(20 U.S.C. 3153)

SEC. 4604. PROGRAMS FOR COMPUTER-BASED INSTRUCTION.

(a) GENERAL AUTHORITY.—The Secretary is authorized to make grants and enter into contracts, as authorized by section 4601 for the purpose of strengthening and expanding computer education resources available in public and private elementary and secondary schools.

(b) USES OF FUNDS.—Projects assisted under this section may include—

(1) the acquisition and leasing of computer hardware for instructional purposes, including services necessary for the operation, installation, and maintenance of computer hardware;

(2) the acquisition of computer software and complementary instructional materials; or

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[1] So in original. Probably should be "this part".

(3) teacher training programs designed to improve the quality of instruction in computer education and to expand the use of computers in the curriculum. Such programs may make provision for teacher stipends at a rate of $275 per week for the period of attendance in such program. The Secretary may enter into cooperative agreements with the National Science Foundation and other appropriate nonprofit agencies and organizations in carrying out programs under this section.

(c) SPECIAL RULE.—No grant may expend more than 25 percent for the acquisition of computer hardware.

(d) PLANNING REQUIREMENT.—No grant may be made under this section unless the applicant carries out planning activities designed to facilitate the use of Federal financial assistance under this section for the expansion of computer resources in elementary or secondary schools. Such planning activities shall include—

(1) the goals for computer education in the schools;

(2) integration with the curriculum;

(3) where appropriate, provisions for computer use after school by students, parents, teachers, and adult learners; and

(4) standards for the evaluation of computer education programs.

(20 U.S.C. 3154)

SEC. 4605. PROGRAMS FOR THE IMPROVEMENT OF COMPREHENSIVE SCHOOL HEALTH EDUCATION.

(a) GENERAL AUTHORITY.—The Secretary through the Office established under subsection (c) of this section, may—

(1) encourage State and local educational agencies to provide comprehensive school health education to the elementary and secondary school students in the schools of such agencies;

(2) provide technical support to State and local educational agencies on health education programs and curricula;

(3) make grants to State and local educational agencies in accordance with this section;

(4) provide an annual report on the progress of the Office (established under subsection (c)) and the status of school health education in the United States;

(5) cooperate with other Federal agencies carrying out school health education programs to ensure coordination of such programs; and

(6) advise the Secretary on school health education policy.

(b) USES OF FUNDS.—Grants under this section may be used to improve elementary and secondary education in the areas of—

(1) personal health and fitness;

(2) nutrition;

(3) mental and emotional health;

(4) prevention of chronic diseases;

(5) substance use and abuse;

(6) accident prevention and safety;

(7) community and environmental health;

(8) prevention and control of communicable diseases;

(9) effective use of the health services delivery system; and

(10) development and aging.

(c) OFFICE OF COMPREHENSIVE SCHOOL HEALTH EDUCATION.—The Secretary may establish within the Office of the Secretary an Office of Comprehensive School Health Education with the following responsibilities:

(1) To recommend mechanisms for the coordination of school health education programs conducted by various Federal agencies.

(2) To advise the Secretary on the formulation of school health education policy within the Department of Education.

(3) To disseminate information on the benefits to health education of utilizing a comprehensive health curriculum in schools.

(20 U.S.C. 3155)

SEC. 4606. ALTERNATIVE CURRICULUM SCHOOLS.

(a) STATEMENT OF PURPOSE.—It is the purpose of this section to assist—

(1) local educational agencies;

(2) consortia of such agencies; and

(3) intermediate educational units;

which have significant percentages of minority students to establish and conduct programs which reflect a minority composition of at least 50 percent in the alternative curriculum school established by the applicant to strengthen the knowledge of elementary and secondary school students in academic subjects and to contribute to the desegregation of the schools of the applicant.

(b) ELIGIBILITY.—A local educational agency, consortium of such agencies, or intermediate educational unit, is eligible to receive a grant under this section if such agency, unit, or consortium submits an application which contains evidence of collaborative arrangements between the applicant and an institution of higher education, a community-based organization, another local educational agency, an appropriate State educational agency, or any combination of such institutions, organizations, or agencies.

(c) USES OF FUNDS.—Grants under this section may be used for—

(1) planning and outreach activities directly related to expansion and enhancement of academic programs and services in the alternative curriculum school;

(2) the acquisition of books, materials, and equipment (including computers and the maintenance and operation thereof) necessary for the conduct of educational programs in the alternative curriculum school; and

(3) the payment, or subsidization of the compensation, of elementary and secondary school teachers who are certified or licensed by the State and who are necessary for the conduct of educational programs in the alternative curriculum school;

whenever such assistance is directly related to improving the knowledge of mathematics, science, history, English, foreign languages, art, or music, or to improving the vocational skills of elementary and secondary school students.

(d) APPLICATIONS.—Each applicant desiring to receive a grant under this section shall submit an application in such form, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall—

(1) provide assurances that the assistance will be used for the purposes described in subsection (c);

(2) provide assurances that the local educational agency or intermediate educational unit would have a minority composition of at least 65 percent, or in the case of a consortium, that at least one local educational agency would have a minority composition of 65 percent;

(3) provide assurances that the students served in the alternative curriculum school established reflect a minority composition of at least 50 percent;

(4) demonstrate the extent to which the alternative curriculum school will contribute to desegregation in the local educational agency;

(5) demonstrate the extent to which the alternative curriculum school will contribute to the improvements of the academic quality of the education offered by schools throughout the local educational agency;

(6) describe the collaborative efforts required by subsection (b);

(7) provide assurances that teachers will be employed in the courses of instruction assisted under this section who are certified or licensed by the State to teach the subject matter of the courses of instruction;

(8) provide assurances that the applicant will not engage in discrimination based upon race, religion, color, national origin, sex, or handicapping conditions in—

(A) hiring, promotion, or assignment of employees of the applicant or other personnel for whom the applicant has any administrative responsibility;

(B) the mandatory assignment of students to schools or to courses of instruction within schools of such applicant, except as is necessary to carry out an approved desegregation plan; and

(C) designing or operating extracurricular activities for students;

(9) describe how funds made available under this section will be used to promote integration and provide a high quality education program for local educational agencies with significant concentrations of minority students;

(10) describe how such applicant will devote its resources to continuing the program when funds made available to it under this section may no longer be made available; and

(11) provide such other assurances as the Secretary determines necessary.

(e) UNUSED AMOUNTS.—In any fiscal year in which amounts are appropriated but not allocated under this section, the Secretary shall use such amounts to make grants under title III of this Act (relating to magnet schools).

(f) SPECIAL EVIDENTIARY RULE.—Notwithstanding any other provision of law, the award of funds under this section may not be used in any cause of action or administrative proceeding as evidence relating to the issue of desegregation of a public school of a local educational agency receiving such an award.

(20 U.S.C. 3156)

SEC. 4607. INNOVATIVE ALCOHOL ABUSE EDUCATION PROGRAMS.

(a) PROGRAMS FOR CHILDREN OF ALCOHOLICS.—The Secretary is authorized to develop materials for innovative programs of alcohol abuse education, especially programs that focus on the effect of the disease of alcoholism on families of alcoholics, particularly with respect to children of alcoholics. Programs for which materials are developed under the preceding sentence should be programs designed to benefit young children, particularly children in grades 5 through 8.

(b) TRAINING PROGRAMS FOR EDUCATORS.—The Secretary may make grants to programs for educators that are designed to—

(1) increase awareness of children's problems that may be caused by an alcoholic parent;

(2) enhance the ability of such educators to identify children at risk for alcohol abuse;

(3) inform such educators concerning referral of children of alcoholics for appropriate professional treatment; and

(4) train such educators to inform the public about the special problems of children who have an alcoholic parent.

(20 U.S.C. 3156–1)

SEC. 4608. NATIONAL GEOGRAPHY STUDIES CENTERS.

(a) PROGRAM AUTHORIZED.—(1) The Secretary is authorized to enter into a contract with the Education Foundation of the National Geographic Society in order to pay the Federal share of the cost of the establishment and operation of National Geography Studies Centers. Each Center shall be for the study of geography in elementary and secondary schools.

(2) For the purpose of this section—

(A) the term "contractor" means the Education Foundation of the National Geographic Society; and

(B) the term "Centers" mean[1] the National Geography Studies Centers assisted under this section.

(b) REQUIREMENTS OF CONTRACT.—The contract described in subsection (a)(1) shall provide that—

(1) funds made available to the contractor pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating the Centers in accordance with this section; and

(2) the contractor will carry out the provisions of this section.

(c) ESTABLISHMENT OF CENTERS.—In carrying out the provisions of this section, the contractor may enter into contracts with or make grants to local educational agencies, State educational agencies, State higher educational agencies, institutions of higher education, or consortia thereof, to establish and operate the Centers.

(d) FUNCTIONS OF THE CENTERS.—(1) Each Center assisted under this section shall—

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[1] So in original. Probably should be "means".

(A) support programs for the study of geography for elementary and secondary school students, that may include laboratory schools and summer institutes;

(B) support programs which provide elementary and secondary school teacher retraining and inservice training in geography and may make provision for teacher stipends for the period of participation in the program; and

(C) establish procedures, through an advisory panel, for selecting elementary and secondary school students and teachers for the programs supported through the centers[2].

The selection procedures under subparagraph (C), to the extent practicable, shall take into account geographic distribution and the needs for greater access to, and participation in, geography studies by students and teachers from historically underrepresented groups including females, minorities, and individuals with handicaps.

(2) Each Center may—

(A) support the development and dissemination of innovative curriculum in geography;

(B) develop geography curriculum to be used in other subject areas such as environmental studies, science, international culture and politics, history, and foreign language studies; and

(C) provide technical and resource assistance in geography to elementary and secondary schools in the region served by the Center.

(e) FEDERAL SHARE.—The Federal share for each fiscal year shall be 75 percent.

(20 U.S.C. 3156a)

SEC. 4609. INSTRUCTION ON THE HISTORY AND PRINCIPLES OF DEMOCRACY IN THE UNITED STATES.

(a) GENERAL AUTHORITY.—

(1) PROGRAM ESTABLISHED.—The Secretary shall carry out a program to educate students about the history and principles of the Constitution of the United States, including the Bill of Rights, and to foster civic competence and civil responsibility. Such program shall be known as "We the People . . . The Citizen and the Constitution".

(2) EDUCATIONAL ACTIVITIES.—The program required by paragraph (1) shall continue and expand the educational activities of the National Bicentennial Competition of the Constitution and Bill of Rights administered by the Center for Civic Education.

(3) CONTRACT OR GRANT AUTHORIZED.—The Secretary is authorized to enter into a contract or grant with the Center for Civic Education to carry out the program required by paragraph (1).

(b) PROGRAM CONTENT.—The education program authorized by this section shall provide—

(1) a course of instruction on the basic principles of our constitutional democracy and the history of the Constitution and Bill of Rights;

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[2] So in original. Probably should be capitalized.

(2) school and community simulated congressional hearings following the course of study at the request of participating schools; and

(3) an annual national competition of simulated congressional hearings for secondary students who wish to participate in such program.

(c) PROGRAM PARTICIPANTS.—The education program authorized by this section shall be made available to public and private elementary and secondary schools in the 435 congressional districts, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(d) SPECIAL RULE.—Funds provided under this section may be used for the advanced training of teachers about the Constitution and Bill of Rights after the provisions of subsection (b) have been implemented.

(e) REPORT.—The Secretary shall report on a biennial basis, to the appropriate committees of the Congress on the distribution and use of funds authorized pursuant to the authority of subsection (f).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for the fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992 and 1993 to carry out the provisions of this section.

(20 U.S.C. 3156b)

SEC. 4610. AUTHORIZATION OF APPROPRIATIONS.

(a) There are authorized to be appropriated $20,000,000 for the fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 through 1993, to carry out the provisions of this part (other than sections 4606 and 4607[1]).

(b)(1) Subject to paragraph (2), there are authorized to be appropriated $35,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 through 1993 to carry out section 4606.

(2) No appropriation may be made under paragraph (1) for any fiscal year unless the amount appropriated for the Magnet Schools Assistance Program in title III for that fiscal year is equal to or exceeds $165,000,000.

(d)[2] There are authorized to be appropriated $5,000,000 for the fiscal year 1989, and each succeeding fiscal year ending prior to October 1, 1993, to carry out section 4607.

(20 U.S.C. 3157)

PART G—READY TO LEARN TELEVISION

SEC. 4701. READY TO LEARN.

(a) IN GENERAL.—The Secretary is authorized to enter into contracts, cooperative agreements, or grants with entities described in section 4702(b) to develop, produce, and distribute educational and instructional video programming for preschool and elementary school children and their parents in order to facilitate the achievement of the national education goals.

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[1] So in original. Probably should be 4608.

[2] So in original. Probably should be redesignated as "(c)".

(b) Availability.—In making such contracts, cooperative agreements, or grants, the Secretary shall ensure that recipients make programming widely available with support materials as appropriate to young children, their parents, child care workers, and Head Start providers to increase the effective use of such programming.

(20 U.S.C. 3161)

SEC. 4702. EDUCATIONAL PROGRAMMING.

(a) Awards.—The Secretary shall award contracts, cooperative agreements, or grants to eligible entities to—

(1) facilitate the development directly or through contracts with producers of children and family educational television programming, educational programming for preschool and elementary school children, and accompanying support materials and services that promote the effective use of such programming; and

(2) contract with entities (such as public broadcasting entities and those funded under the Star Schools Assistance Act) in order that programs developed under this section are disseminated and distributed to the widest possible audience appropriate to be served by the programming by the most appropriate distribution technologies.

(b) Eligible Entities.—To be eligible to receive a contract, cooperative agreement, or grant under subsection (a), an entity shall be—

(1) a nonprofit, nongovernmental entity able to demonstrate a capacity for the development and distribution of educational and instructional television programming of high quality for preschool and elementary school children; and

(2) able to demonstrate a capacity to contract with the producers of children's television programming for the purpose of developing educational television programming of high quality for preschool and elementary school children.

(c) Cultural Experiences.—Programming developed under this section shall reflect the recognition of diverse cultural experiences and the needs and experiences of both boys and girls in engaging and preparing young children for schooling.

(20 U.S.C. 3161a)

SEC. 4703. DUTIES OF SECRETARY.

The Secretary is authorized—

(1) to establish and administer a Special Projects of National Significance program to award contracts, cooperative agreements, or grants to public and nonprofit private entities, or local public television stations or such public television stations that are part of a consortium with one or more State educational agencies, local educational agencies, local schools, institutions of higher education, or community-based organizations of demonstrated effectiveness, for the purpose of—

(A) addressing the learning needs of young children in limited English proficient households, and developing appropriate educational and instructional television programming to foster the school readiness of such children;

(B) developing programming and support materials to increase family literacy skills among parents to assist parents in teaching their children and utilizing educational television programming to promote school readiness; and

(C) identifying, supporting, and enhancing the effective use and outreach of innovative programs that promote school readiness;

(2) to establish within the Department a clearinghouse to compile and provide information, referrals and model program materials and programming obtained or developed under this part to parents, child care providers, and other appropriate individuals or entities to assist such individuals and entities in accessing programs and projects under this part; and

(3) to develop and disseminate training materials, including—

(A) interactive programs and programs adaptable to distance learning technologies that are designed to enhance knowledge of children's social and cognitive skill development and positive adult-child interactions; and

(B) support materials to promote the effective use of materials developed under paragraph (2);

among parents, Head Start providers, in-home and center based day care providers, early childhood development personnel, and elementary school teachers, public libraries, and after school program personnel caring for preschool and elementary school children;

(4) coordinate activities with the Secretary of Health and Human Services in order to—

(A) maximize the utilization of quality educational programming by preschool and elementary school children, and make such programming widely available to federally funded programs serving such populations; and

(B) provide information to grantees of Federal programs that have major training components for early childhood development, including Head Start, Even Start, and State training activities funded under the Child Care Development Block Grant Act of 1990 regarding the availability and utilization of materials developed under paragraph (3) to enhance parent and child care provider skills in early childhood development and education.

(20 U.S.C. 3161b)

SEC. 4704. APPLICATIONS.

Each eligible entity desiring a contract, cooperative agreement, or grant under section 4701 or 4703 shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(20 U.S.C. 3161c)

SEC. 4705. REPORTS AND EVALUATION.

(a) ANNUAL REPORT TO SECRETARY.—An entity receiving funds under section 4701 shall prepare and submit to the Secretary an annual report which contains such information as the Secretary may require. At a minimum, the report shall describe the program activities undertaken with funds received under this section, including—

(1) the programming that has been developed directly or indirectly by the entity, and the target population of the programs developed;

(2) the support materials that have been developed to accompany the programming, and the method by which such materials are distributed to consumers and users of the programming;

(3) the means by which programming developed under this section has been distributed, including the distance learning technologies that have been utilized to make programming available and the geographic distribution achieved through such technologies; and

(4) the initiatives undertaken by the entity to develop public-private partnerships to secure non-Federal support for the development and distribution and broadcast of educational and instructional programming.

(b) REPORT TO CONGRESS.—The Secretary shall prepare and submit to the relevant committees of Congress a biannual report which includes—

(1) a summary of the information made available under section 4702(a);

(2) a description of the training materials made available under section 4703(3), the manner in which outreach has been conducted to inform parents and child care providers of the availability of such materials, and the manner in which such materials have been distributed in accordance with such section.

(20 U.S.C. 3161d)

SEC. 4706. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this part, $25,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994. Not less than 60 percent of the amounts appropriated under this subsection for each fiscal year shall be used to carry out section 4702.

(b) SPECIAL PROJECTS.—Of the amount appropriated under subsection (1) for each fiscal year, at least 10 percent of such amount shall be utilized in each such fiscal year for activities under section 4703(1)(C).

(20 U.S.C. 3161e)

SEC. 4707. ADMINISTRATIVE COSTS.

With respect to the implementation of section 4702, entities receiving a contract, cooperative agreement, or grant from the Secretary may use up to 5 percent of the amounts received under such section for the normal and customary expenses of administering the contract, cooperative agreement, or grant.

(20 U.S.C. 3161f)

SEC. 4708. DEFINITION.

For the purposes of this part, the term "distance learning" means the transmission of educational or instructional programming to geographically dispersed individuals and groups via telecommunications.

(20 U.S.C. 3161g)

TITLE V—DRUG EDUCATION

SEC. 5101. SHORT TITLE.

This title may be cited as the "Drug-Free Schools and Communities Act of 1986".

(20 U.S.C. 3171)

SEC. 5102. FINDINGS.

The Congress finds that:

(1) Drug abuse education and prevention programs are essential components of a comprehensive strategy to reduce the demand for and use of drugs throughout the Nation.

(2) Drug use and alcohol abuse are widespread among the Nation's students, not only in secondary schools, but increasingly in elementary schools as well.

(3) The use of drugs and the abuse of alcohol by students constitute a grave threat to their physical and mental wellbeing and significantly impede the learning process.

(4) The tragic consequences of drug use and alcohol abuse by students are felt not only by students and their families, but also by their communities and the Nation, which can ill afford to lose their skills, talents, and vitality.

(5) Schools and local organizations in communities throughout the Nation have special responsibilities to work together to combat the scourge of drug use and alcohol abuse.

(6) Prompt action by our Nation's schools, families, and communities can bring significantly closer the goal of a drug-free generation and a drug-free society.

(20 U.S.C. 3172)

SEC. 5103. PURPOSE.

It is the purpose of this title to establish programs of drug abuse education and prevention (coordinated with related community efforts and resources) through the provision of Federal financial assistance—

(1) to States for grants to local and intermediate educational agencies and consortia to establish, operate, and improve local programs of drug abuse prevention, early intervention, rehabilitation referral, and education in elementary and secondary schools (including intermediate and junior high schools);

(2) to States for grants to and contracts with community-based organizations for programs of drug abuse prevention, early intervention, rehabilitation referral, and education for school dropouts and other high-risk youth;

(3) to States for development, training, technical assistance, and coordination activities;

(4) to institutions of higher education to establish, implement, and expand programs of drug abuse education and pre-

vention (including rehabilitation referral) for students enrolled in colleges and universities; and

(5) to institutions of higher education in cooperation with State and local educational agencies for teacher training programs in drug abuse education and prevention.

(20 U.S.C. 3173)

PART A—FINANCIAL ASSISTANCE FOR DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS

SEC. 5111. AUTHORIZATION OF APPROPRIATIONS.

(a)(1) IN GENERAL.—For the purpose of carrying out this title (other than part C and section 5136), there are authorized to be appropriated $350,000,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993.

(2)(A) Except as provided in subparagraph (B), there are authorized to be appropriated for purposes of carrying out part C and section 5136 $16,000,000 for fiscal year 1989, $20,000,000 for the fiscal year 1990, and $50,000,000 for each of the fiscal years 1991, 1992, and 1993.

(B) No funds may be appropriated for any fiscal year pursuant to the authorization contained in subparagraph (A) unless the amount appropriated for such fiscal year pursuant to the authorization contained in paragraph (1) is not less than $215,000,000.

(3) There are authorized to be appropriated for purposes of carrying out section 5136 $25,000,000 for each of the fiscal years 1991, 1992, and 1993.

(b) AVAILABILITY.—(1) Appropriations for any fiscal year for payments made under this title in accordance with regulations of the Secretary may be made available for obligation or expenditure by the agency or institution concerned on the basis of an academic or school year differing from such fiscal year.

(2) Funds appropriated for any fiscal year under this title shall remain available for obligation and expenditure until the end of the fiscal year succeeding the fiscal year for which such funds were appropriated.

(20 U.S.C. 3181)

SEC. 5112. RESERVATIONS AND STATE ALLOTMENTS.

(a) RESERVATIONS.—Except as provided in subsection (c), from the sums appropriated or otherwise made available to carry out this title for any fiscal year, the Secretary shall reserve—

(1) 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs;

(2) 1 percent for programs for Indian youth under section 5133;

(3) 0.2 percent for programs for Hawaiian natives under section 5134;

(4) 8 percent for programs with institutions of higher education under section 5131;

(5) 3.5 percent for Federal activities under section 5132; and

(6) 4.5 percent for regional centers under section 5135.

(b) State Allotments.—(1) From the remainder of the sums not reserved under subsection (a), the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the school-age population of the State bears to the school-age population of all States, except that no State shall be allotted less than an amount equal to 0.5 percent of such remainder.

(2) The Secretary may reallot any amount of any allotment to a State to the extent that the Secretary determines that the State will not be able to obligate such amount within 2 years of allotment. Any such reallotment shall be made on the same basis as an allotment under paragraph (1).

(3) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under this subsection from amounts appropriated for that fiscal year.

(c) Distribution of Appropriations.—Except for funds provided for any fiscal year for part C of this title and sections 5136 and 5137, and for fiscal year 1991 for section 5146, the Secretary shall distribute any amounts appropriated or otherwise made available to carry out this title for any fiscal year in the following manner:

(1) In any year in which the total of such amounts is not more than the total amount appropriated or otherwise made available to carry out this title for the fiscal year 1989, the Secretary shall distribute such total amount as provided in subsections (a) and (b).

(2) In any year in which the total of such amounts is greater than the total amount appropriated or otherwise made available to carry out this title for the fiscal year 1989, the amount in excess of the total amount appropriated or otherwise made available to carry out this title for the fiscal year 1989 shall be distributed as follows:

(A) Such amount as is necessary to carry out the reservations under paragraphs (1), (2), and (3) of subsection (a);

(B)(i) Except as provided in clause (ii), not more than $14,700,000 to be allocated to the chief executive officer of each State, in an amount which bears the same ratio to such amount as the school-age population of the State bears to the school-age population of all States.

(ii) For fiscal year 1990, in addition to amounts made available under clause (i), $25,000,000 shall be available for distribution to the chief executive officer of each State in an amount which bears the same ratio to such additional amount as the school-age population of the State bears to the school-age population of all States. Funds available under this clause shall be used to carry out section 5136.

(C) Subject to subparagraph (D), of the remainder—

(i) 50 percent of such remainder shall be distributed to the States under subsection (b); and

(ii) 50 percent of such remainder shall be distributed to the States on the basis of the amounts received by each

State under part A of title I of chapter 1[1] for the preceding fiscal year.

(D) Under subparagraph (C), no State shall be allotted less than an amount equal to 0.5 percent of such remainder.

(d) DEFINITION.—For the purposes of this section, the term "State" means any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(20 U.S.C. 3182)

PART B—STATE AND LOCAL PROGRAMS

SEC. 5121. USE OF ALLOTMENTS BY STATES.

(a) STATE PROGRAM.—(1) An amount equal to 30 percent of the total amount paid to a State from its allotment under section 5112 for any fiscal year shall be used by the chief executive officer of such State for a State program in accordance with section 5122.

(2) Not more than 2.5 percent of the amount reserved under paragraph (1) may be used for administrative costs of the chief executive officer of the State incurred in carrying out the duties of the chief executive officer under this part.

(b) WITHIN STATE DISTRIBUTION; ADMINISTRATIVE COSTS.—An amount equal to 70 percent of the total amount paid to a State from its allotment under section 5112 for any fiscal year shall be used by the State educational agency to carry out its responsibilities in accordance with section 5124 and for grants to local and intermediate educational agencies and consortia for programs and activities in accordance with section 5125.

(c) USE OF ADDITIONAL AMOUNTS.—Any amounts received by a State under section 5112(c)(2)(C) shall be used by the State educational agency to make grants to local educational agencies for purposes of carrying out programs in accordance with section 5125. The State educational agency shall distribute any such amounts among the local educational agencies within the State on the basis of the amounts received by each such local educational agency under part A of title I of chapter 1[1] for the preceding fiscal year.

(20 U.S.C. 3191)

SEC. 5122. STATE PROGRAMS.

(a) IN GENERAL.—Not more than 42.5 percent of the funds available for each fiscal year under section 5121(a) to the chief executive officer of a State shall be used for grants to and contracts with parent groups, community action agencies, community-based organizations, and other public entities and private nonprofit entities)[2] for the development and implementation of programs and activities such as—

(1) local broadly-based programs for drug and alcohol abuse prevention, early intervention, rehabilitation referral, and education for all age groups;

(2) training programs concerning drug abuse education and prevention for teachers, counselors, other educational per-

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[1] So in original. Probably should read "part A of chapter 1 of title I".

[2] So in original. Closing parenthesis probably should not appear. See Public Law 101-226, sec. 5(1), 103 Stat. 1929.

sonnel, parents, local law enforcement officials, judicial officials, other public service personnel, and community leaders;

(3) the development and distribution of educational and informational materials to provide public information (through the media and otherwise) for the purpose of achieving a drug-free society;

(4) technical assistance to help community-based organizations and local and intermediate educational agencies and consortia in the planning and implementation of drug abuse prevention, early intervention, rehabilitation referral, and education programs;

(5) activities to encourage the coordination of drug abuse education and prevention programs with related community efforts and resources, which may involve the use of a broadly representative State advisory council including members of the State board of education, members of local boards of education, parents, teachers, counselors, health and social service professionals, and others having special interest or expertise;

(6) other drug abuse education and prevention activities consistent with the purposes of this title, which may include a youth suicide prevention program;

(7) intrastate drug and alcohol abuse education and prevention centers for providing outreach, consultation, training, and referral services to schools, organizations, and members of the community, except that—

(A) any administrative expenses of such centers, including overhead expenses, shall be considered, for the purposes of section 5121(a)(2), to be administrative costs of the chief administrative officer of the State incurred in carrying out the duties of the chief executive officer under this part;

(B) amounts made available for purposes of this paragraph may not be used for building or construction; and

(C) the activities of any such center that receives assistance under this paragraph shall be coordinated with the activities of other relevant centers in the State; and

(8) to promote, establish, and maintain drug-free school zones for schools within the State, which shall include—

(A) the determination, with the assistance of municipal authorities and local law enforcement agencies, as appropriate, of the geographical boundaries of schools within the State and the posting of signs identifying school properties as drug-free school zones;

(B) drug-abuse education and prevention programs and enforcement policies designed to eliminate the illicit use of alcohol and drugs in such zones;

(C) assisting teachers, administrators, athletic directors, and other school personnel in cooperating fully with law enforcement officials to punish violations of laws relating to illegal drugs;

(D) informing the community—

(i) of the content and intent of laws relating to school safety and laws relating to illegal drugs as they affect schoolchildren; and

(ii) of the perimeters of the drug-free school zones;

(E) employing the services of the local or substate regional advisory council on drug abuse education and prevention established or designated by the local application submitted under section 5126(a) as a resource for advice and support with respect to implementation of such zones; and

(F) communication to students, teachers, athletic directors, and other school personnel by administrators that activities that are illicit and harmful to the health and well-being of the students will not be tolerated within schools and their surrounding environments.

(b) INNOVATIVE PROGRAMS.—(1) Not less than 42.5 percent of the funds available for each fiscal year under section 5121(a) to the chief executive officer of a State shall be used for innovative community-based programs of coordinated services for high-risk youth. The chief executive officer shall make grants to or enter into contracts with public entities or private nonprofit entities for purposes of providing community-based programs of coordinated services that are designed for high-risk youths, including programs that use strategies to improve skills of such youths such as vocational and educational counseling and job skills training, giving priority to assisting community action agencies, community-based organizations, parent groups, and other entities which are representative of communities or significant segments of communities and which have the capability to provide such services. The chief executive officer shall also make grants to private nonprofit organizations to develop new strategies to communicate anti-drug abuse messages to youths.

(2) For purposes of this subsection, the term "high risk youth" means an individual who has not attained the age of 21 years, who is at high risk of becoming or who has been a drug or alcohol abuser, and who—

(A) is a school dropout;

(B) has experienced repeated failure in school;

(C) has become pregnant;

(D) is economically disadvantaged;

(E) is the child of a drug or alcohol abuser;

(F) is a victim of physical, sexual, or psychological abuse;

(G) has committed a violent or delinquent act;

(H) has experienced mental health problems;

(I) has attempted suicide;

(J) has experienced long-term physical pain due to injury; and

(K) is a juvenile in a detention facility within the State.

(3) Not more than 10 percent of participants in programs under paragraph (1) may be individuals who are not high-risk youth if the Secretary determines that the participation of such individuals will not significantly diminish the amount or quality of services provided to high-risk youth.

(c) Amounts made available to the chief executive officer of a State for use under this section shall be expended only for activities that—

(1) are authorized under subsection (a) or (b); and

(2) have demonstrable benefits for individuals who are eligible to participate in such activities.

(d) DRUG TESTING PROGRAMS.—For each fiscal year, amounts made available to the chief executive officer of a State by section 5121(a) may be used for nondiscriminatory random drug testing programs for students voluntarily participating in athletic activities only in schools which voluntarily choose to participate in such a program. Nothing in this subsection shall prescribe or prohibit the use of drug testing programs.

(c)[1] DRUG ABUSE RESISTANCE EDUCATION PROGRAMS.—(1) Not less than 10 percent of the funds available for each fiscal year under section 5121(a) to the chief executive officer of a State shall be used for grants to local educational agencies in consortium with entities which have experience in assisting school districts to provide instruction to students grades kindergarten through 6 to recognize and resist pressures that influence such students to use controlled substances, as defined in Schedules I and II of section 202 of the Controlled Substances Act the possession or distribution of which is unlawful under such Act, or beverage alcohol, such as Project Drug Abuse Resistance Education, that meet the requirements of paragraph (2).

(2) A local educational agency in consortium with an entity shall not be eligible for a grant under paragraph (1) unless such local educational agency in consortium with an entity will use assistance provided under such grant to provide or arrange for the provisions[2] of services that shall include—

(A) drug abuse resistance education instruction for students grades kindergarten through 6 that is designed to teach students to recognize and resist pressures to experiment that influence such children to use controlled substances, as defined under paragraph (1), or beverage alcohol, including instruction in the following areas—

(i) drug use and misuse;

(ii) understanding the consequences of drug abuse;

(iii) resistance techniques;

(iv) assertive response styles;

(v) managing stress without taking drugs;

(vi) decisionmaking and risk taking;

(vii) media influences on drug use;

(viii) positive alternatives to drug abuse behavior;

(ix) interpersonal and communication skills;

(x) self-esteem building activities; and

(xi) resistance to peer pressure and gang pressure;

(B) provisions for parental involvement;

(C) classroom instruction by uniformed law enforcement officials;

(D) the use of positive student leaders to influence younger students not to use drugs;

(E) an emphasis on activity-oriented techniques designed to encourage student-generated responses to problem-solving situations; and

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[1] So in law. P.L. 101–647, sec. 1504(3), added new subsections (c) through (f) without redesignating or repealing the existing subsections (c) and (d).

[2] So in original. Probably should be "provision".

(F) the awarding of a certificate of achievement to each student who participates in a drug abuse resistance education program.

(3) Amounts received under paragraph (1) by any local educational agency or entity shall be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the support of projects of the type described in paragraph (2).

(d)[1] REPLICATION OF SUCCESSFUL DRUG EDUCATION PROGRAMS.—Not less than 5 percent of the funds available for each fiscal year under section 5121(a) to the chief executive officer of a State shall be used for grants to local educational agencies or consortia of local educational agencies and private nonprofit entities to provide drug abuse education, prevention, or counseling services to students in kindergarten through grade 12.

(e)[1] ELIGIBILITY.—A local educational agency or consortium described in subsection (a) shall not be eligible for a grant under this section unless such agency or consortium agrees—

(1) to use assistance provided under such grant to provide or arrange for the provision of programs offering drug abuse education, prevention, or counseling to students of compulsory school age, including—

(A) programs to provide drug abuse counseling in the schools by trained personnel;

(B) programs that stress the use of peers to combat student abuse of drugs and alcohol;

(C) programs that stress parental and community involvement in combating student abuse of drugs and alcohol; and

(D) other appropriate programs;

(2) that programs provided with assistance under the grant shall be designed to prevent or eliminate student abuse of drugs or alcohol;

(3) to use assistance provided under the grant to expand or replicate a program that has a demonstrated record of success at either the State or local level in preventing or eliminating student abuse of drugs or alcohol; and

(4) to ensure that the program to be expanded or replicated is appropriate for the students to be served, based on an assessment of their most important needs.

(f)[1] APPLICATION.—A local educational agency or consortium described in subsection (a) that desires to receive a grant under this section shall submit an application to the chief executive office of the State at such time, in such manner, and containing or accompanied by such information and assurances as such officer may reasonably require. Each such application shall contain—

(1) a discussion of why the particular program to be assisted under the grant is appropriate for and responds to the particular needs of the students to be served;

(2) a complete description of the success of the program to be assisted under the grant in reducing or eliminating drug or alcohol abuse among students of compulsory school age;

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[1] See footnote 1 on page 155.

(3) an assurance that the consortium concerned will provide assistance, in cash or in kind, for the program assisted under the grant in an amount equal to not less than 10 percent of the amount provided under the grant; and

(4) an assurance that funds received under the grant shall be used to supplement, not supplant, the amount of other Federal, State, and local funds expended for support of programs of the type described in subsection (b).

(20 U.S.C. 3192)

SEC. 5123. STATE APPLICATIONS.

(a) IN GENERAL.—In order to receive an allotment under section 5112(b), a State shall submit an application to the Secretary. As part of such application, the chief executive officer of the State shall agree to use the funds made available under section 5121(a) in accordance with the requirements of this part. As part of such application, the State educational agency of the State shall agree to use the funds made available under section 5121(b) in accordance with the requirements of this part.

(b) CONTENTS OF APPLICATIONS.—The application submitted by each State under subsection (a) shall—

(1) cover a period of three fiscal years;

(2) be submitted at such time and in such manner, and contain such information, as the Secretary may require;

(3) contain assurances that the Federal funds made available under this part for any period will be so used as to supplement and increase the level of State, local, and non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under this part and will in no event supplant such State, local, and other non-Federal funds;

(4) provide that the State will keep such records and provide such information as may be required by the Secretary for fiscal audit and program evaluation;

(5) contain assurances that there is compliance with the specific requirements of this part;

(6) include a comprehensive plan describing how money allocated to the chief executive officer is to be used;

(7) describe the manner in which the State educational agency will coordinate its efforts with appropriate State health, law enforcement, and drug abuse prevention agencies, including the State agency which administers the Alcohol, Drug Abuse, and Mental Health block grant under part B of title XIX of the Public Health Service Act, and judicial officials;

(8) provide assurances that the State educational agency will provide financial assistance under this part only to local and intermediate educational agencies and consortia which establish and implement drug abuse education and prevention programs in elementary and secondary schools;

(9) provide for an annual evaluation of the effectiveness of programs assisted under this part;

(10) provide a description of how, where feasible, the alcohol and drug abuse programs will be coordinated with youth suicide prevention programs funded by the Federal Govern-

ment, State and local governments, and nongovernmental agencies and organizations;

(11) provide a description of State teacher certification requirements, if applicable, regarding training in drug and alcohol abuse education and prevention; and

(12) include a plan for providing innovative programs of drug abuse education for juveniles in detention facilities within the State as required by section 5122(b)(1)(A).

(20 U.S.C. 3193)

SEC. 5124. RESPONSIBILITIES OF STATE EDUCATIONAL AGENCIES.

(a) GRANTS TO LOCAL AND INTERMEDIATE EDUCATIONAL AGENCIES.—(1) Each State educational agency shall use a sum which shall not be less than 90 percent of the amounts available under section 5121(b) for each fiscal year for grants to local educational agencies, intermediate educational agencies, and consortia in the State, in accordance with applications approved under section 5126.

(2) From the sum described in paragraph (1), the State educational agency shall distribute funds for use among local educational agencies, intermediate educational agencies, and consortia in the State on the basis of the relative enrollments in public schools and private nonprofit schools served by such agencies and consortia.

(3)(A) Not later than July 1 of each year, the State educational agency shall inform each local educational agency, intermediate educational agency, and consortium in the State of the amount allocated to such agency or consortium from amounts available under subsections (b) and (c) of section 5121. If a local educational agency or a consortium of local educational agencies chooses not to apply to receive the amount allocated to such agency under this subsection, the State educational agency—

(i) shall distribute such amount to the intermediate educational agency serving such local educational agency or consortium; or

(ii) may, if it is able to facilitate the arrangement of a consortium among local educational agencies in the State that choose not to apply to receive the amounts allocated to such agencies under this subsection, distribute such amount to such consortium.

(B) The State educational agency shall distribute to a local educational agency, intermediate educational agency, or consortium the amount allocated to such agency or consortium from amounts available under subsections (b) and (c) of section 5121 upon the approval of an application for such agency under section 5126.

(4)(A) Except as provided in subparagraph (B), upon the expiration of the 1-year period beginning on the date that a local educational agency, intermediate educational agency, or consortium under this subsection receives its allocation under this subsection—

(i) such agency or consortium shall return to the State educational agency any funds from such allocation that remain unobligated; and

(ii) the State educational agency shall reallocate any such amount to local educational agencies, intermediate educational agencies, or consortia that have plans for using such amount for programs or activities on a timely basis.

(B) In any fiscal year, a local educational agency, intermediate educational agency, or consortium may retain for obligation in the succeeding fiscal year—

(i) an amount equal to not more than 25 percent of the allocation it receives under this subsection for such fiscal year; or

(ii) upon a demonstration of good cause by such agency or consortium, a greater amount approved by the State educational agency.

(b) State Programs.—Each State educational agency shall use not more than 10 percent of the amounts available under section 5121(b) for each fiscal year for such activities as—

(1) training and technical assistance programs concerning drug abuse education and prevention for local and intermediate educational agencies, including teachers, administrators, athletic directors, other educational personnel, parents, local law enforcement officials, and judicial officials;

(2) the development, identification, and dissemination of the most readily available, accurate, and up-to-date model curriculum materials that clearly and consistently teach that illicit drug use is harmful for consideration by local educational agencies and for evaluation of the materials;

(3) demonstration projects in drug abuse education and prevention;

(4) special financial assistance to enhance resources available for drug abuse education and prevention in areas serving large numbers of economically disadvantaged children or sparsely populated areas, or to meet special needs; and

(5) administrative costs of the State educational agency in carrying out its responsibilities under this part, not in excess of 5 percent of the amounts available under subsections (b) and (c) of section 5121.

(20 U.S.C. 3194)

SEC. 5125. LOCAL DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS.

(a) In General.—Any amounts made available to local or intermediate educational agencies or consortia under section 5124(a) shall be used for drug and alcohol abuse prevention and education programs and activities, including—

(1) the development, acquisition, and implementation of elementary and secondary school drug abuse education and prevention curricula and textbooks and materials, including audiovisual materials—

(A) developed from the most readily available, accurate, and up-to-date information; and

(B) which clearly and consistently teach that illicit drug use is wrong and harmful;

(2) school-based programs of drug abuse prevention and early intervention (other than treatment), which—

(A) should, to the extent practicable, employ counselors whose sole duty is to provide drug abuse prevention counseling to students;

(B) may include the use of drug-free older students as positive role models and instruction relating to—

(i) self-esteem;

(ii) drugs and drug addiction;

(iii) decisionmaking and risk-taking;

(iv) stress management techniques; and

(v) assertiveness;

(C) may bring law enforcement officers into the classroom to provide antidrug information and positive alternatives to drug use, including decisionmaking and assertiveness skills; and

(D) in the case of a local educational agency that determines it has served all students in all grades, such local educational agency may target additional funds to particularly vulnerable age groups, especially those in grades 4 through 9;

(3) family drug abuse prevention programs, including education for parents to increase awareness about the symptoms and effects of drug use through the development and dissemination of appropriate educational materials;

(4) drug abuse prevention and intervention counseling programs (which counsel that illicit drug use is wrong and harmful) for students, parents, and immediate families, including professional and peer counselors and involving the participation (where appropriate) of parent, or other adult counselors and reformed abusers, which may include—

(A) the employment of counselors, social workers, psychologists, or nurses who are trained to provide drug abuse prevention and intervention counseling; or

(B) the provision of services through a contract with a private nonprofit organization that employs individuals who are trained to provide such counseling;

(5) outreach activities, drug and alcohol abuse education and prevention programs, and referral services, for school dropouts;

(6) guidance counseling programs and referral services for parents and immediate families of drug and alcohol abusers;

(7) programs of referral for drug abuse treatment and rehabilitation;

(8) programs of inservice and preservice training in drug and alcohol abuse prevention for teachers, counselors, other school personnel, athletic directors, public service personnel, law enforcement officials, judicial officials, and community leaders;

(9) programs in primary prevention and early intervention, such as the interdisciplinary school-team approach;

(10) community education programs and other activities to involve parents and communities in the fight against drug and alcohol abuse;

(11) public education programs on drug and alcohol abuse, including programs utilizing professionals and former drug and alcohol abusers; [1]

(12) model alternative schools for youth with drug problems that address the special needs of such students through education and counseling; and [2]

(13) on-site efforts in schools to enhance identification and discipline of drug and alcohol abusers, and to enable law enforcement officials to take necessary action in cases of drug possession and supplying of drugs and alcohol to the student population;

(14) special programs and activities to prevent drug and alcohol abuse among student athletes, involving their parents and family in such drug and alcohol abuse prevention efforts and using athletic programs and personnel in preventing drug and alcohol abuse among all students;

(15) in the case of a local educational agency that determines that it provides sufficient drug and alcohol abuse education during regular school hours, after-school programs that provide drug and alcohol abuse education for school-aged children, including children who are unsupervised after school, and that may include school-sponsored sports, recreational, educational, or instructional activities (local educational agency may make grants or contracts with nonprofit community-based organizations that offer sports, recreation, education, or child care programs); and

(16) other programs of drug and alcohol abuse education and prevention, consistent with the purposes of this part.

(b) ELIGIBILITY.—A local or intermediate educational agency or consortium may receive funds under this part for any fiscal year covered by an application under section 5126 approved by the State educational agency.

(20 U.S.C. 3195)

SEC. 5126. LOCAL APPLICATIONS.

(a) IN GENERAL.—(1) In order to be eligible to receive a grant under this part for any fiscal year, a local or intermediate educational agency or consortium shall submit an application to the State educational agency for approval before the expiration of the 120-day period beginning on the date that the State educational agency notifies the local educational agency, intermediate educational agency, or consortium of the amount allocated to such agency or consortium under section 5124(a)..[3]

(2) An application under this section shall be for a period not to exceed 3 fiscal years and may be amended annually as may be necessary to reflect changes without filing a new application. Such application shall—

(A) set forth a comprehensive plan for programs to be carried out by the applicant under this part;

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[1] Public Law 101-226, section 8(4), 103 Stat. 1932 struck "and" at the end of 5125(a)(11). Because there is no "and" at the end of paragraph (11), this amendment was not executed.

[2] So in original. The word "and" should probably be striken. See P.L. 101-226, sec. (8)6), 103 Stat. 1932

[3] So in original. One period probably should be striken.

(B) contain an estimate of the cost for the establishment and operation of such programs;

(C) establish or designate a local or substate regional advisory council on drug abuse education and prevention composed of individuals who are parents, teachers, officers of State and local government, medical professionals, representatives of the law enforcement community, community-based organizations, and other groups with interest and expertise in the field of drug abuse education and prevention;

(D) describe the extent of the current drug and alcohol problem in the schools of the applicant;

(E) describe the manner in which the applicant will coordinate its efforts under this part with other programs in the community related to drug abuse education, prevention, treatment, and rehabilitation and with appropriate community-based organizations;

(F) provides assurances that the applicant will coordinate its efforts with appropriate State and local drug and alcohol abuse, health, and law enforcement agencies, in order to effectively conduct drug and alcohol abuse education, intervention, and referral for treatment and rehabilitation for the student population;

(G) provide assurances that the Federal funds made available under this part shall be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purposes described in this part, and in no case supplant such funds;

(H) provide assurances of compliance with the provisions of this part;

(I) agree to keep such records and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation, consistent with the responsibilities of the State agency under this part;

(J) describe how the applicant will ensure that the schools will be an important part of a community-wide effort to achieve a drug-free population;

(K) describe how, to the extent practicable, assistance provided under this title will be used to provide trained counselors, social workers, psychologists, and nurses to carry out drug abuse prevention and intervention activities in addition to any individuals so employed by the applicant on the date of the enactment of the Drug-Free Schools and Communities Act Amendments of 1989;

(L) provide assurances that the applicant will maintain and make available for distribution a list of local resources for substance abuse counseling and treatment;

(M) provide assurances that the applicant has reviewed curricula that it intends to use and that such curricula will meet the needs of the schools served by the applicant;

(N) describe how, to the extent practicable, assistance provided under the grant will be used to provide drug abuse counseling services to children of all ages, including students in the elementary schools;

(O) describe how, to the extent practicable, activities assisted under the grant will be coordinated with local law enforcement agencies in order to improve security on school grounds and in the surrounding community and to educate students about—

(i) the dangers of drug use and drug-related violence;

(ii) the penalties for possession of or trafficking in illegal drugs;

(iii) techniques for resisting drug abuse; and

(iv) the importance of cooperating with law enforcement officials in eliminating drug abuse and identifying individuals who supply drugs to students;

(P) describe the training that will be provided for teachers and other personnel who are involved in the implementation of programs to be carried out by the applicant under this part; and

(Q) include such other information and assurances as the State educational agency reasonably determines to be necessary.

(b) PROGRESS REPORTS.—(1) Each applicant shall annually submit to the State educational agency a progress report on the implementation of its plan. The progress report shall include—

(A) the applicant's significant accomplishments under the plan during the preceding year;

(B) the extent to which the original objectives of the plan are being achieved;

(C) a discussion of the method used by the applicant to evaluate the effectiveness of its drug education program carried out under its plan; and

(D) the results of the evaluation described in subparagraph (C).

(2) If the State educational agency determines that the applicant's progress report shows that it is not making reasonable progress toward accomplishing the objectives of its plan and the purposes of this Act, the State educational agency shall provide such technical assistance to the applicant as may be necessary.

(20 U.S.C. 3196)

SEC. 5127. REPORTS.

(a) STATE REPORTS.—Each State shall submit to the Secretary a biennial report that contains information on the State and local programs conducted with assistance furnished under this title. Each such report shall—

(1) be in a standard format;

(2) request standard information as prescribed by the Secretary; and

(3) include—

(A) a description of the drug and alcohol problem in the elementary and secondary schools in the State as of the date of the report;

(B) a description of the range of drug and alcohol policies in the schools in the State;

(C) the number of individuals served by this title;

(D) [1] the demographic characteristics of populations served;

(E) types of service provided and duration of the services;

(F) information on how the State has targeted the populations listed under section 5122(b)(2);

(G) a description of the model drug and alcohol abuse education and prevention programs in the State that have been demonstrated to be effective; and

(H) an evaluation of the effectiveness of State and local drug and alcohol abuse education and prevention programs.

(b) LOCAL REPORTS.—Each State educational agency shall request the information required to prepare the biennial reports required by subsection (a) as part of the local educational agency application and progress reports required by section 5126. Information requested under the preceding sentence shall be limited to information described in section 5126 and subsection (a).

(20 U.S.C. 3197)

PART C—TRAINING OF TEACHERS, COUNSELORS, AND SCHOOL PERSONNEL

SEC. 5128. GRANTS FOR TRAINING OF TEACHERS.

(a) IN GENERAL.—From amounts appropriated pursuant to the authorization contained in section 5111(a)(2), the Secretary shall make grants to State educational agencies, local educational agencies, and institutions of higher education for teachers training programs in accordance with this section.

(b) USE OF FUNDS.—Amounts made available under grants under this section shall be used to establish, expand, or enhance programs and activities for the training of elementary and secondary school teachers and administrators, and other elementary and secondary school personnel concerning drug and alcohol abuse education and prevention.

(20 U.S.C. 3201)

SEC. 5129. GRANTS FOR TRAINING OF COUNSELORS.

(a) IN GENERAL.—

(1) From amounts appropriated pursuant to the authorization contained in section 5111(a)(2), the Secretary shall give priority to making a substantial number of grants to qualified State educational agencies, local educational agencies, and institutions of higher education for programs to train counselors, social workers, psychologists, or nurses in accordance with this section.

(2) The Secretary may also make a grant under this part to any private nonprofit agency that has an agreement with a local educational agency to provide training in drug abuse counseling for individuals who will provide such counseling in the schools of such local educational agency.

(b) USE OF FUNDS.—Amounts made available under grants under this section shall be used to establish, expand, or enhance programs and activities for the training of counselors, social workers, psychologists, or nurses who are providing or will provide drug abuse prevention, counseling, or referral services in elementary and secondary schools.

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[1] So in original.

(20 U.S.C. 3202)

SEC. 5130. APPLICATIONS.

(a) IN GENERAL.—Any State or local educational agency, institution of higher education, or consortium of such agencies or institutions that desires to receive a grant under this part in any fiscal year submit[1] an application to the Secretary at such time and in such manner as the Secretary may prescribe.

(b) CONTENTS.—Each application submitted under this section shall—

(1) set forth the activities and programs to be carried out with funds paid under this part;

(2) contain an estimate of the cost for the establishment and operation to such activities and programs;

(3) provide assurances that the Federal funds made available under this section shall be used to supplement, and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purpose described in this part, and in no case to supplant such funds;

(4) provide assurances of compliance with this part;

(5) in the case of a grant under section 5129, contain a discussion of how the training to be assisted under the grant will assist the applicant to—

(A) increase the number of school personnel who are trained to provide drug abuse counseling services; and

(B) improve the quality of drug abuse counseling services offered by the applicant or the local educational agency concerned; and

(6) include such other information and assurances as the Secretary reasonably determines to be necessary.

(20 U.S.C. 3203)

PART D—NATIONAL PROGRAMS

SEC. 5131. GRANTS TO INSTITUTIONS OF HIGHER EDUCATION.

(a) In General.—(1) From sums reserved by the Secretary under section 5112(a)(4) for the purposes of this section, the Secretary shall make grants to or enter into contracts with institutions of higher education or consortia of such institutions for drug abuse education and prevention programs under this section.

(2) The Secretary shall make financial assistance available on a competitive basis under this section. An institution of higher education or consortium of such institutions which desires to receive a grant or enter into a contract under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require in accordance with regulations.

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[1] So in original. Probably should be "shall submit".

(3) The Secretary shall make every effort to ensure the equitable participation of private and public institutions of higher education (including community and junior colleges) and to ensure the equitable geographic participation of such institutions. In the award of grants and contracts under this section, the Secretary shall give appropriate consideration to colleges and universities of limited enrollment.

(4) Not less than 50 percent of sums available for the purposes of this section shall be used to make grants under subsection (c).

(b) GRANTS FOR MODEL DEMONSTRATION PROGRAMS.—Grants shall be available for model demonstration programs to be coordinated with local elementary and secondary schools for the development and implementation of quality drug abuse education curricula. In the award of grants under this subsection, the Secretary shall give priority consideration to joint projects involving faculty of institutions of higher education and teachers in elementary and secondary schools in the practical application of the findings of educational research and evaluation and the integration of such research into drug abuse education and prevention programs.

(c) GRANTS FOR PROGRAMS OF DRUG ABUSE EDUCATION AND PREVENTION.—Grants shall be available under this subsection to develop, implement, operate, and improve programs of drug abuse education and prevention (including rehabilitation referral) for students enrolled in institutions of higher education.

(20 U.S.C. 3211)

SEC. 5132. FEDERAL ACTIVITIES.

(a) USE OF RESERVED FUNDS.—From sums reserved by the Secretary under section 5112(a)(5), the Secretary shall carry out the purposes of this section.

(b) FEDERAL DRUG ABUSE EDUCATION AND PREVENTION ACTIVITIES.—The Secretary of Education in conjunction with the Secretary of Health and Human Services shall carry out Federal education and prevention activities on drug abuse. The Secretary shall coordinate such drug abuse education and prevention activities with other appropriate Federal activities related to drug abuse. The Secretary shall directly or through grants, cooperative agreements, or contracts—

(1) provide information on drug abuse education and prevention to the Secretary of Health and Human Services for dissemination by the clearinghouse for alcohol and drug abuse information established under section 509 of the Public Health Service Act;

(2) facilitate the utilization of appropriate means of communicating to students at all educational levels about the dangers of drug use and alcohol abuse, especially involving the participation of entertainment personalities and athletes who are recognizable role models for many young people;

(3) develop, publicize the availability of, and widely disseminate the most readily available, accurate, and up-to-date audio-visual and other curricular materials for drug abuse education and prevention programs in elementary and secondary schools throughout the Nation; and coordinate activities that complement media efforts of groups such as the Partnership

for a Drug-Free America, professional and amateur sports organizations, and other public service organizations;

(4) provide technical assistance to State, local, and intermediate education agencies and consortia in the selection and implementation of drug abuse education and prevention curricula, approaches, and programs to address most effectively the needs of the elementary and secondary schools served by such agencies;

(5) identify research and development priorities with regard to school-based drug abuse education and prevention, particularly age-appropriate programs focusing on kindergarten through grade 4;

(6) use private nonprofit organizations to develop innovative strategies to communicate antidrug abuse messages to youths and to eliminate drug abuse from the communities of the Nation; and

(7) as necessary, evaluate programs assisted under this title.

(c) STUDIES.—(1) The Secretary of Education in conjunction with the Secretary of Health and Human Services shall conduct, directly or by contract, a study of the relationship between drug and alcohol abuse and youth suicide and shall submit a report of the findings of such studies to the President and to the appropriate committees of the Congress not later than 1 year after the date of the enactment of this title.

(2) The Secretary shall summarize and consolidate the biennial reports submitted under section 5127(a) and shall transmit such summary and consolidation, together with recommendations for future education and prevention efforts, to the Associate Director of the Office of National Drug Control Policy, and to the Congress.

(3)(A) The Secretary, in consultation with the Secretary of Health and Human Services, shall conduct an independent evaluation, directly or by contract, of a representative sample of programs assisted under this title and shall identify successful projects which may be replicated by other local educational agencies throughout the country. The Secretary shall submit to the Congress—

(i) an interim report containing the results of such evaluation and a description of such projects not later than October 1, 1991, and

(ii) a final report containing such information not later than January 1, 1994.

(B) The Secretary shall ensure that the information contained in the reports required by subparagraph (A) is submitted for dissemination to the National Diffusion Network and through the regional centers established under section 5135.

(20 U.S.C. 3212)

SEC. 5133. PROGRAMS FOR INDIAN YOUTH.

(a) USE OF RESERVED FUNDS.—From the funds reserved pursuant to section 5112(a)(2), the Secretary shall make payments and grants and enter into other financial arrangements for Indian programs in accordance with this subsection.

(b) FINANCIAL ARRANGEMENTS.—The Secretary of Education shall enter into such financial arrangements as the Secretary determines will best carry out the purposes of this title to meet the needs of Indian children on reservations serviced by elementary and secondary schools funded for Indian children by the Department of the Interior. Such arrangements shall be made pursuant to an agreement between the Secretary of Education and the Secretary of the Interior containing such assurances and terms as they determine will best achieve the purposes of this title.

(c) GRANT AND CONTRACT AUTHORITY.—The Secretary of Education may, upon request of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934, enter into grants or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs which are authorized and consistent with the purposes of this title (particularly programs for Indian children who are school dropouts), except that such grants or contracts shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act and shall be conducted in accordance with sections 4, 5, and 6 of the Act of April 16, 1934, which are relevant to the programs administered under this paragraph.

(d) ADDITIONAL PROGRAMS.—Programs funded under this subsection[1] shall be in addition to such other programs, services, and activities as are made available to eligible Indians under other provisions of this title.

(20 U.S.C. 3213)

SEC. 5134. PROGRAMS FOR HAWAIIAN NATIVES.

(a) GENERAL AUTHORITY.—From the funds reserved pursuant to section 5112(a)(3), the Secretary shall make grants to or enter into cooperative agreements or contracts with organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this title for the benefit of Hawaiian natives.

(b) DEFINITION OF "HAWAIIAN NATIVE".—For the purposes of this section, the term "Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

(20 U.S.C. 3214)

SEC. 5135. REGIONAL CENTERS.

The Secretary, through grants, cooperative agreements, or contracts, shall use the amounts made available to carry out this section for each fiscal year to maintain 5 regional centers to—

(1) train school teams to assess the scope and nature of their drug abuse and alcohol abuse problems, mobilize the community to address such problems, design appropriate curricula, identify students at highest risk and refer them to appropriate treatment, and institutionalize long-term effective drug and alcohol abuse programs, including long-range technical assistance, evaluation, and followup on such training;

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[1] So in original. Probably should be "section".

(2) assist State educational agencies in coordinating and strengthening drug abuse and alcohol abuse education and prevention programs;

(3) assist local educational agencies and institutions of higher education in developing appropriate preservice and inservice training programs for educational personnel; and

(4) evaluate and disseminate information on effective drug abuse and alcohol abuse education and prevention programs and strategies.

(20 U.S.C. 3215)

SEC. 5136[1] EMERGENCY GRANTS.

(a) PROGRAM AUTHORIZED.—Except as provided under subsection (d), the Secretary, in consultation with the Attorney General and the Secretary of Health and Human Services, shall make grants to eligible local educational agencies that demonstrate significant need for additional assistance for purposes of combating drug and alcohol abuse by students served by such agencies.

(b) ELIGIBLE AGENCIES.—A local educational agency shall be eligible to receive a grant under this section if such agency—

(1) receives assistance under section 1006 or meets the criteria of clauses (i) and (ii) of section 1006(a)(1)(A); and

(2) serves an area—

(A) in which there is a large number or a high percentage of—

(i) arrests for, or while under the influence of, drugs or alcohol; or

(ii) convictions of youths for drug or alcohol-related crimes;

(B) in which there is a large number or high percentage of referrals of youths to drug and alcohol abuse treatment and rehabilitation programs; and

(C) that has a significant drug and alcohol abuse problem, as indicated by other appropriate data.

(c) AMOUNT OF GRANTS.—Each grant awarded under this section shall be in an amount that is not less than $100,000 and not more than $1,000,000.

(d) FISCAL YEAR 1990.—For fiscal year 1990, funds available for the purposes of this section shall be allocated to the chief executive officer of each State for distribution through State educational agencies to local educational agencies.

(20 U.S.C. 3216)

SEC. 5137. DRUG-FREE SCHOOL ZONES DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT OF DEMONSTRATION PROGRAM FOR DRUG-FREE SCHOOL ZONES.—The Secretary of Education is authorized to establish a demonstration program to establish and maintain drug-free school zones as described in section 5122(a)(8). In carrying out the demonstration program under this section, the Secretary shall make grants to local educational agencies, intermediate educational agencies, and consortia.

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[1] P.L. 101–647; enacted November 29, 1990 sec. 1509(e), 104 Stat. 4842; amended the heading to read as follows: "SEC. 5136. EMERGENCY GRANTS." This amendment was not executed because the current heading was not changed.

(b) EVALUATIONS.—The Secretary shall evaluate programs under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 to carry out the purposes of this section. Funds appropriated under this section are authorized to remain available until expended.

(20 U.S.C. 3217)

PART E—GENERAL PROVISIONS

SEC. 5141. DEFINITIONS.

(a) GENERAL RULE.—Except as otherwise provided, the terms used in this title shall have the meaning provided under section 1471 of title 1 of this Act.

(b) SPECIFIC DEFINITIONS.—For the purposes of this title, the following terms have the following meanings:

(1) The term "drug abuse education and prevention" means prevention, early intervention, rehabilitation referral, and education related to the abuse of alcohol and the use and abuse of controlled, illegal, addictive, or harmful substances, including anabolic steroids.[1]

(2) The term "illicit drug use" means the use of illegal drugs and the abuse of other drugs and alcohol, including anabolic steroids.[1].

(3) The term "Secretary" means the Secretary of Education.

(4) The term "school-age population" means the population aged 5 through 17 (inclusive), as determined by the Secretary on the basis of the most recent satisfactory data available from the Department of Commerce.

(5) The term "school dropout" means an individual aged 5 through 18 who is not attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma. This definition shall not apply after the Secretary defines such term as required by section 6201 of this Act.

(6) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or the Virgin Islands.

(7) The term "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a 2-year program which is acceptable for full credit toward such a degree, or offers a 2-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

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[1] Public Law 101–226, 103 Stat. 1935, sec. 16, amended sec. 5141(1), (2) and (10). The amendments probably should have been made to sec. 5141(b)(1), (2), and (10).

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than 3 institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited, except that in the case of an institution offering a 2-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which requires the understanding and application of basic engineering, scientific, or mathematical principles or knowledge if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this title and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of education or training offered.

(8) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(9) The term "consortium" (except in section 5131) means a consortium of local educational agencies or of one or more intermediate educational agencies and one or more local educational agencies.

(10)[1] The term "school personnel" includes teachers, administrators, guidance counselors, social workers, psychologists, nurses, librarians, and other support staff who are employed by a school or who perform services for the school on a contractual basis.

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[1] See footnote on previous page.

(20 U.S.C. 3221)

SEC. 5142. FUNCTIONS OF THE SECRETARY OF EDUCATION.

(a) ADMINISTRATION.—The Secretary shall be responsible for the administration of the programs authorized by this title.

(b) MODEL CRITERIA AND FORMS.—The Secretary, in consultation with a representative sample of national educational organizations, shall develop model criteria and forms for the collection of data and information with respect to programs assisted under this title. In order to enable schools and community-based organizations to share uniform data and information with respect to programs assisted under this title, the model criteria and forms shall be disseminated to the regional centers established under section 5135 as a resource for State and local educational programs.

(c) APPLICABILITY OF GENERAL EDUCATION PROVISIONS ACT.—Except as otherwise provided, the General Education Provisions Act shall apply to programs authorized by this title.

(20 U.S.C. 3222)

SEC. 5143. PARTICIPATION OF CHILDREN AND TEACHERS FROM PRIVATE NONPROFIT SCHOOLS.

(a) PARTICIPATION OF PRIVATE SCHOOL CHILDREN.—To the extent consistent with the number of school-age children in the State or in the school attendance area of a local or intermediate educational agency or consortium receiving financial assistance under part B who are enrolled in private nonprofit elementary and secondary schools, such State, agency, or consortium shall, after consultation with appropriate private school representatives, make provision for including services and arrangements for the benefit of such children as will assure the equitable participation of such children in the purposes and benefits of this title.

(b) PARTICIPATION OF PRIVATE SCHOOL TEACHERS.—To the extent consistent with the number of school-age children in the State or in the school attendance area of a local or intermediate educational agency or consortium receiving financial assistance under part B who are enrolled in private nonprofit elementary and secondary schools, such State, agency, or consortium shall, after consultation with appropriate private school representatives, make provision, for the benefit of such teachers in such schools, for such teacher training as will assure equitable participation of such teachers in the purposes and benefits of this title.

(c) PROVISION OF SERVICES BY SECRETARY AND STATE EDUCATIONAL AGENCIES.—(1) If by reason of any provision of law a State, local, or intermediate educational agency or consortium is prohibited from providing for the participation of children or teachers from private nonprofit schools as required by subsections (a) and (b) or, if the Secretary determines that a State, local, or intermediate educational agency or consortium has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children or teachers which shall be subject to the requirements of this section. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with section 1017 of this Act.

(2) If a State educational agency determines that a local educational agency, intermediate educational agency, or consortium, as appropriate, is failing to provide for the equitable participation of children or teachers from private nonprofit elementary or secondary schools in accordance with subsection (a) or (b), the State educational agency shall waive the requirements of such subsection with respect to such local educational agency, intermediate educational agency, or consortium and make appropriate arrangements for the equitable participation of such children or teachers.

(20 U.S.C. 3223)

SEC. 5144. MATERIALS.

Any materials produced or distributed with funds made available under this title shall reflect the message that illicit drug use is wrong and harmful. The Secretary shall not review curricula and shall not promulgate regulations to carry out this subsection[1] or subparagraph[2] (1) or (4) of section 5125(a).

(20 U.S.C. 3224)

SEC. 5145. CERTIFICATION OF DRUG AND ALCOHOL ABUSE PREVENTION PROGRAMS.

(a) IN GENERAL.—Notwithstanding any other provision of law other than section 432 of the General Education Provisions Act and section 103(b) of the Department of Education Organization Act, no local educational agency shall be eligible to receive funds or any other form of financial assistance under any Federal program unless it certifies to the State educational agency that it has adopted and has implemented a program to prevent the use of illicit drugs and alcohol by students or employees that, at a minimum, includes—

(1) age-appropriate, developmentally based drug and alcohol education and prevention programs (which address the legal, social, and health consequences of drug and alcohol use and which provide information about effective techniques for resisting peer pressure to use illicit drugs or alcohol) for students in all grades of the schools operated or served by the applicant, from early childhood level through grade 12;

(2) conveying to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful;

(3) standards of conduct that are applicable to students and employees in all the applicant's schools and that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on school premises or as part of any of its activities;

(4) a clear statement that sanctions (consistent with local, State, and Federal law), up to and including expulsion or termination of employment and referral for prosecution, will be imposed on sudents and employees who violate the standards of conduct required by paragraph (3) and a description of those sanctions;

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[1] So in original. Probably should be "section".

[2] So in original. Probably should be "paragraph".

(5) information about any available drug and alcohol counseling and rehabilitation and re-entry programs that are available to students and employees;

(6) a requirement that parents, students, and employees be given a copy of the standards of conduct required by paragraph (3) and the statement of sanctions required by paragraph (4);

(7) notifying parents, students, and employees that compliance with the standards of conduct required by paragraph (3) is mandatory; and

(8) a biennial review by the applicant of its program to—

(A) determine its effectiveness and implement changes to the program if they are needed; and

(B) ensure that the sanctions required by paragraph (4) are consistently enforced.

(b) DISSEMINATION OF INFORMATION.—Each local educational agency that provides the certification required by subsection (a) shall, upon request, make available to the Secretary, the State educational agency, and to the public full information about the elements of its program required by subsection (a), including the results of its biennial review.

(c) CERTIFICATION TO SECRETARY.—Each State educational agency shall certify to the Secretary that it has adopted and has implemented a program to prevent the use of illicit drugs and the abuse of alcohol by its students and employees that is consistent with the program required by subsection (a) of this section. The State educational agency shall, upon request, make available to the Secretary and to the public full information about the elements of its program.

(d) REGULATIONS.—(1) The Secretary shall publish regulations to implement and enforce the provisions of this section, including regulations that provide for—

(A) the periodic review by State educational agencies of a representative sample of programs required by subsection (a); and

(B) a range of responses and sanctions for local educational agencies that fail to implement their programs or to consistently enforce their sanctions, including information and technical assistance, the development of a compliance agreement, and the termination of any form of Federal financial assistance.

(2) The sanctions required by subsection (a)(1)(4) may include the completion of an appropriate rehabilitation program.

(e)[1] Upon a determination by the Secretary to terminate financial assistance to any local educational agency under this section, the agency may file an appeal with an administrative law judge before the expiration of the 30-day period beginning on the date such agency is notified of the decision to terminate financial assistance under this section. Such judge shall hold a hearing with respect to such termination of assistance before the expiration of the 45-day period beginning on the date that such appeal is filed. Such judge may extend such 45-day period upon a motion by the agency concerned. The decision of the judge with respect to such termination shall be considered to be a final agency action.

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[1] So in original. This subsection probably should have a subsection heading following the designation.

(20 U.S.C. 3224a)

SEC. 5146. DISSEMINATION OF INFORMATION AND TECHNICAL ASSISTANCE.

(a) Dissemination of Information and Technical Assistance.—The Secretary, through the National Diffusion Network established under section 1562, shall disseminate information and technical assistance with respect to drug abuse education and prevention programs of demonstrated effectiveness.

(b) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section, $500,000 for fiscal year 1991.

(20 U.S.C. 3224b)

PART F—DEVELOPMENT OF EARLY CHILDHOOD EDUCATION DRUG ABUSE PREVENTION MATERIALS

SEC. 5151. PROGRAM AUTHORIZED.

(a) General Authority.—The Secretary shall, in consultation with the Secretary of Health and Human Services, provide for the development of age-appropriate drug abuse education and prevention curricula, programs, and training materials for use in early child development programs, and provide for the dissemination of such materials to early child development programs, including Head Start programs, preschool programs funded under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, programs funded under the Education of the Handicapped Act, such other preschool programs as the Secretary deems appropriate, and to parents of children participating in such programs.

(b) Reservation.—The Secretary shall, from amounts reserved under section 5112(a)(5), reserve not less than $1,000,000 to carry out the development and dissemination of the materials required by this part.

(20 U.S.C. 3227)

PART G—MISCELLANEOUS PROVISIONS

SEC. 5191. INDIAN EDUCATION PROGRAMS.

(a) Pilot Programs.—The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools funded by the Bureau of Indian Affairs (subject to the approval of the local school board or contract school board) to determine the effectiveness of summer youth programs in furthering the purposes and goals of the Indian Alcohol and Substance Abuse Prevention Act of 1986. The Assistant Secretary shall defray all costs associated with the actual operation and support of the pilot programs in the school from funds appropriated for this section. For the pilot programs there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989.

(b) Use of Funds.—Federal financial assistance made available to public or private schools because of the enrollment of Indian children pursuant to—

(1) the Act of April 16, 1934, as amended by the Indian Education Assistance Act (25 U.S.C. 452 et seq.),

(2) the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241aa et seq.), and

(3) the Indian Education Act (20 U.S.C. 3385),

may be used to support a program of instruction relating to alcohol and substance abuse prevention and treatment.

(20 U.S.C. 3231)

SEC. 5192. TRANSITION.

Notwithstanding section 1003 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, a State educational agency may allot funds for each of the fiscal years 1987 and 1988 to local and intermediate educational agencies and consortia under section 4124 of the Drug-Free Schools and Communities Act of 1986 on the basis of their relative numbers of children in the school-age population.

(20 U.S.C. 3232)

SEC. 5193. IDENTIFICATION OF FEDERALLY ASSISTED PROGRAMS.

Every local recipient of funds under this title shall, in any publication or public announcement, clearly identify any program assisted under this title as a Federal program funded under the Drug-Free Schools and Communities Act of 1986.

(20 U.S.C. 3233)

TITLE VI—PROJECTS AND PROGRAMS DESIGNED TO ADDRESS SCHOOL DROPOUT PROBLEMS AND TO STRENGTHEN BASIC SKILLS INSTRUCTION

PART A—ASSISTANCE TO ADDRESS SCHOOL DROPOUT PROBLEMS

SEC. 6001. SHORT TITLE.

This part may be cited as the "School Dropout Demonstration Assistance Act of 1988".

(20 U.S.C. 3241)

SEC. 6002. PURPOSE.

The purpose of this part is to reduce the number of children who do not complete their elementary and secondary education by providing grants to local educational agencies to establish and demonstrate—

(1) effective programs to identify potential student dropouts and prevent them from dropping out;

(2) effective programs to identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education;

(3) effective early intervention programs designed to identify at-risk students in elementary and secondary schools; and

(4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of the children not completing their elementary and secondary education and the reasons why such children have dropped out of school.

(20 U.S.C. 3242)

SEC. 6003. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subject to subsection (b), there are authorized to be appropriated for the purposes of this part $50,000,000 for fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(b) No amounts are authorized to be appropriated under subsection (a) for any fisal year in which assistance is made available to local eduational agencies under part C of chapter 1 of title I.

(20 U.S.C. 3243)

SEC. 6004. GRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) ALLOTMENT TO CATEGORIES OF LOCAL EDUCATIONAL AGENCIES.—From the amount appropriated under section 6003 for any fiscal year, the Secretary shall first reserve not more than $2,000,000 for the purposes of evaluating programs carried out with assistance under this part. From the remaining amount, the Secretary shall allot the following percentages to each of the following categories of local educational agencies:

(1) Local educational agencies administering schools with a total enrollment of 100,000 or more elementary and secondary school students shall be allotted 25 percent of such remaining amount.

(2) Local educational agencies administering schools with a total enrollment of at least 20,000 but less than 100,000 elementary and secondary school students shall be allotted 40 percent of such remaining amount.

(3) Local educational agencies administering schools with a total enrollment of less than 20,000 elementary and secondary school students shall be allotted 30 percent of such remaining amount. Grants may be made under this paragraph to intermediate educational units and consortia of not more than 5 local educational agencies in any case in which the total enrollment of the largest such local educational agency is less than 20,000 elementary and secondary students. Such units and consortia may also apply in conjunction with the State educational agency. Not less than 20 percent of funds available under this paragraph shall be awarded to local educational agencies administering schools with a total enrollment of less than 2,000 elementary and secondary school students.

(4) Community-based organizations shall be allotted 5 percent of such remaining amount. Grants under this category shall be made after consultation between the community-based organization and the local educational agency that is to benefit from such a grant.

(b) SPECIAL TREATMENT OF EDUCATIONAL PARTNERSHIPS.—(1) The Secretary shall allot not less than 25 percent and not more than 50 percent of the funds available for each category described in paragraphs (1), (2), and (3) of subsection (a) of this section to educational partnerships.

(2) Educational partnerships under this subsection shall include—

(A) a local educational agency; and

(B) a business concern or business organization, or, if an appropriate business concern or business organization is not available, one of the following: any community-based organization, nonprofit private organization, institution of higher education, State educational agency, State or local public agency, private industry council (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station.

(c) AWARD OF GRANT.—From the amount allotted for any fiscal year to a category of local educational agencies under subsection (a), the Secretary shall award as many grants as practicable within each such category to local educational agencies and educational partnerships whose applications have been approved by the Secretary for such fiscal year under section 6005 and whose applications propose a program of sufficient size and scope to be of value as a demonstration. Any local educational agency, educational partnership, or community-based organization that has received a grant under this Act[1] shall be eligible for additional funds subject to the requirements under this Act[1]. The grants shall be made under such terms and conditions as the Secretary shall prescribe consistent with the provisions of this part.

(d) USE OF FUNDS WHEN NOT FULLY NEEDED FOR EDUCATIONAL PARTNERSHIPS.—(1) Whenever the Secretary determines that the full amount of the sums made available under subsection (b) in each category for educational partnerships will not be required for applications of educational partnerships, the Secretary shall make the amount not so required available to local educational agencies in the same category in which the funds are made available.

(2) In order to transfer funds under this subsection, the Secretary shall use a peer review process to determine that such excess funds are not needed to fund educational partnerships and shall prepare a list of the categories in which additional funds are available, and the reasons therefor, and make such list available to local educational agencies upon request. The Secretary may use the peer review process to determine grant recipients of funds transferred in accordance with this subsection.

(e) USE OF FUNDS WHEN NOT FULLY ALLOTTED TO CATEGORIES UNDER SUBSECTION (a).—(1) Whenever the Secretary determines that the full amount of the sums allotted under any category set forth under subsection (a) will not be required for applications of the local educational agencies in the case of categories (1) through (3), the Secretary shall make the amount not so required available to another category under subsection (a). In carrying out the provisions of this subsection, the Secretary shall assure that the transfer of amounts from one category to another is made to a category in which there is the greatest need for funds.

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[1] So in original. Probably should read "this part".

(2) In order to transfer funds under this subsection, the Secretary shall use a peer review process to determine that such excess funds are not needed to fund projects in particular categories and shall prepare a list of the categories in which funds were not fully expended and the reasons therefor, and make such list available to local educational agencies and educational partnerships, upon request. The Secretary may use the peer review process to determine grant recipients of funds transferred in accordance with this subsection.

(f) FEDERAL SHARE.—(1) The Federal share of a grant under this part may not exceed—

(A) 90 percent of the total cost of a project for the first year for which the project receives assistance under this part, and

(B) 75 percent of such cost in each succeeding fiscal year.

(2) The remaining cost of a project that receives assistance under this part may be paid from any source other than funds made available under this part, except that not more than 10 percent of the remaining cost in any fiscal year may be provided from Federal sources other than this part.

(3) The share of payments from sources other than funds made available under this part may be in cash or in kind fairly evaluated, including plant, equipment or services.

(20 U.S.C. 3244)

SEC. 6005. APPLICATION.

(a) IN GENERAL.—(1) A grant under this part may be made only to a local educational agency or an educational partnership which submits an application to the Secretary containing such information as may be required by the Secretary by regulation.

(2) Applications shall be for a 1-year period.

(b) CONTENTS OF APPLICATION.—Each such application shall—

(1) provide documentation of—

(A) the number of children who were enrolled in the schools of the applicant for the 5 academic years prior to the date application is made who have not completed their elementary or secondary education and who are classified as school dropouts pursuant to section 5141(b)(5); and

(B) the percentage that such number of children is of the total school-age population in the applicant's schools;

(2) include a plan for the development and implementation of a dropout information collection and reporting system for documenting the extent and nature of the dropout problem;

(3) include a plan for coordinated activities involving at least 1 high school and its feeder junior high or middle schools and elementary schools for local educational agencies that have feeder systems;

(4) include a plan for the development and implementation of a project including activities designed to carry out the purpose of this part, such as—

(A) implementing identification, prevention, outreach, or reentry projects for dropouts and potential dropouts;

(B) addressing the special needs of school-age parents;

(C) disseminating information to students, parents, and the community related to the dropout problem;

(D) as appropriate, including coordinated services and activities with programs of vocational education, adult basic education, and programs under the Job Training Partnership Act;

(E) involving the use of educational and telecommunications and broadcasting technologies and educational materials for dropout prevention, outreach, and reentry;

(F) providing activities which focus on developing occupational competencies which link job skill preparation and training with genuine job opportunities;

(G) establishing annual procedures for—

(i) evaluating the effectiveness of the project; and

(ii) where possible, determining the cost-effectiveness of the particular dropout prevention and reentry methods used and the potential for reproducing such methods in other areas of the country;

(H) coordinating, to the extent practicable, with other student dropout activities in the community; or

(I) using the resources of the community and parents to help develop and implement solutions to the local dropout problem; and

(5) contain such other information as the Secretary considers necessary to determine the nature of the local needs, the quality of the proposed project, and the capability of the applicant to carry out the project.

(c) PRIORITY.—The Secretary shall, in approving applications under this section, give priority to applications which both show the replication of successful programs conducted in other local educational agencies or the expansion of successful programs within a local educational agency and reflect very high numbers or very high percentages of school dropouts in the schools of the applicant in each category described in section 6004(a).

(d) SPECIAL CONSIDERATION.—The Secretary shall give additional special consideration to applications that include—

(1) provisions which emphasize early intervention services designed to identify at-risk students in elementary or early secondary schools; and

(2) provisions for significant parental involvement.

(e) GRANTS FOR NEW GRANTEES.—In awarding grants under this part in fiscal year 1992 and each fiscal year thereafter to applicants who did not receive a grant under this part in fiscal year 1991, the Secretary shall utilize only those priorities and special considerations described in subsections (c) and (d).

(20 U.S.C. 3245)

SEC. 6006. AUTHORIZED ACTIVITIES.

(a) IN GENERAL.—Grants under this part shall be used to carry out plans set forth in applications approved under section 6005. In addition, grants may be used for educational, occupational, and basic skills testing services and activities, including, but not limited to—

(1) the establishment of systemwide or school-level policies, procedures, and plans for dropout prevention and school reentry;

(2) the development and implementation of activities, including extended day or summer programs, designed to address poor achievement, basic skills deficiencies, language deficiencies, or course failures, in order to assist students at risk of dropping out of school and students reentering school;

(3) the establishment or expansion of work-study, apprentice, or internship programs;

(4) the use of resources of the community, including contracting with public or private entities or community-based organizations of demonstrated performance, to provide services to the grant recipient or the target population;

(5) the evaluation and revision of program placement of students at risk;

(6) the evaluation of program effectiveness of dropout programs;

(7) the development and implementation of programs for traditionally underserved groups of students;

(8) the implementation of activities which will improve student motivation and the school learning environment;

(9) the provision of training for school staff on strategies and techniques designed to—

(A) identify children at risk of dropping out;

(B) intervene in the instructional program with support and remedial services;

(C) develop realistic expectations for student performance; and

(D) improve student-staff interactions;

(10) the study of the relationship between drugs and dropouts and between youth gangs and dropouts, and the coordination of dropout prevention and reentry programs with appropriate drug prevention and community organizations for the prevention of youth gangs;

(11) the study of the relationship between handicapping conditions and student dropouts;

(12) the study of the relationship between the dropout rate for gifted and talented students compared to the dropout rate for the general student enrollment;

(13) the use of educational telecommunications and broadcasting technologies and educational materials designed to extend, motivate, and reinforce school, community, and home dropout prevention and reentry activities; and

(14) the provision of other educational, occupational and testing services and activities which directly relate to the purpose of this part.

(b) ACTIVITIES FOR EDUCATIONAL PARTNERSHIPS.—Grants under this part may be used by educational partnerships for—

(1) activities which offer jobs and college admissions for successful completion of the program for which assistance is sought;

(2) internship, work study, or apprenticeship programs;

(3) summer employment programs;

(4) occupational training programs;

(5) career opportunity and skills counseling;

(6) job placement services;

(7) the development of skill employment competency testing programs;

(8) special school staff training projects;

(9) mentoring programs; and

(10) any other activity described in subsection (a).

(20 U.S.C. 3246)

SEC. 6007. DISTRIBUTION OF ASSISTANCE; LIMITATION ON COSTS.

(a) DISTRIBUTION OF ASSISTANCE.—The Secretary shall ensure that, to the extent practicable, in approving grant applications under this part—

(1) grants are equitably distributed on a geographic basis within each category set forth in section 6004(a);

(2) the amount of a grant to a local educational agency for a fiscal year is proportionate to the extent and severity of the local school dropout problem;

(3) not less than 30 percent of the amount available for grants in each fiscal year is used for activities relating to school dropout prevention; and

(4) not less than 30 percent of the amount available for grants in each fiscal year is used for activities relating to persuading school dropouts to return to school and assisting former school dropouts with specialized services once they return to school.

(b) ADMINISTRATIVE COSTS.—Not more than 5 percent of any grant made under this part may be used for administrative costs.

(20 U.S.C. 3247)

SEC. 6008. REPORTS.

(a) ANNUAL REPORTS.—The Secretary shall submit to the Congress a report by January 1 of each year, beginning on January 1, 1993, which sets forth the progress of the Commissioner of Education Statistics, established under section 406(a) of the General Education Provisions Act, to implement a definition and data collection process for school dropouts in elementary and secondary schools, including statistical information for the number and percentage of elementary and secondary school students by race and ethnic origin who drop out of school each year including dropouts—

(1) throughout the Nation by rural and urban location as defined by the Secretary; and

(2) in each of the individual States and the District of Columbia.

(b) RECOMMENDATIONS.—The report under subsection (a) shall also contain recommendations on ways in which the Federal Government, States and localities can further support the implementation of an effective methodology to accurately measure dropout and retention rates on the national, State, and local levels.

(20 U.S.C. 3248)

PART B—ASSISTANCE TO PROVIDE BASIC SKILLS IMPROVEMENT

SEC. 6101. SHORT TITLE.

This part may be cited as the "Secondary Schools Basic Skills Demonstration Assistance Act of 1988".

(20 U.S.C. 3261)

SEC. 6102. PURPOSE.

It is the purpose of this part to provide assistance to local educational agencies with high concentrations of children from low-income families to improve the achievement of educationally disadvantaged children enrolled in the secondary schools of such agencies.

(20 U.S.C. 3262)

SEC. 6103. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this part $200,000,000 for each of the fiscal years 1991 and 1992.

(20 U.S.C. 3263)

SEC. 6104. GRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) GENERAL AUTHORITY.—From the amount appropriated under section 6103 for any fiscal year the Secretary shall make grants to local educational agencies in accordance with the provisions of this part.

(b) COMMUNITY-BASED ORGANIZATIONS RULE.—Each local educational agency may carry out the activities described in section 6105 in cooperation with community-based organizations.

(c) ELIGIBLE STUDENTS.—Secondary school students who meet the requirements of part A of chapter 1 of title I of this Act other than the requirement of attendance in the designated school attendance area shall be eligible to participate in programs and activities assisted under this part.

(20 U.S.C. 3264)

SEC. 6105. AUTHORIZED ACTIVITIES.

(a) IN GENERAL.—Funds made available under this part may be used—

(1) to initiate or expand programs designed to meet the special educational needs of secondary school students and to help such students attain grade level proficiency in basic skills, and, as appropriate, learn more advanced skills;

(2) to develop innovative approaches—

(A) for surmounting barriers that make secondary school programs under this part difficult for certain students to attend and difficult for secondary schools to administer, such as scheduling problems; and

(B) for courses leading to successful completion of the general educational development test or of graduation requirements;

(3) to develop and implement innovative programs involving community-based organizations or the private sector, or both, to provide motivational activities, pre-employment training, or transition-to-work activities;

(4) to provide programs for eligible students outside the school, with the goal of reaching school dropouts who will not reenter the traditional school, for the purpose of providing compensatory education, basic skills education, or courses for general educational development;

(5) to use the resources of the community to assist in providing services to the target population;

(6) to provide training for staff who will work with the target population on strategies and techniques for identifying, instructing, and assisting such students;

(7) to provide guidance and counseling activities, support services, exploration of postsecondary educational opportunities, youth employment activities, and other pupil services which are necessary to assist eligible students; or

(8) to recruit, train, and supervise secondary school students (including the provision of stipends to students in greatest need of financial assistance) to serve as tutors of other students eligible for services under this part and under part A of chapter 1 of title I of this Act, in order to assist such eligible students with homework assignments, provide instructional activities, and foster good study habits and improved achievement.

(b) LIMITATION.—Not more than 25 percent of amounts available to a local educational agency under this part may be used by such agency for noninstructional services such as those described in subsections (a)(3), (a)(5), and (a)(7).

(20 U.S.C. 3265)

SEC. 6106. APPLICATION.

(a) IN GENERAL.—(1) A grant under this part may be made only to a local educational agency which submits an application to the Secretary containing or accompanied by such information as the Secretary may reasonably require.

(2) Applications shall be for a 1-year period.

(b) CONTENTS OF APPLICATION.—Each such application shall include—

(1) a description of the program goals and the manner in which funds will be used to initiate or expand services to secondary school students;

(2) a description of the activities and services which will be provided by the program (including documentation to demonstrate that the local educational agency has the qualified personnel needed to develop, administer, and implement the program under this part);

(3) a list of the secondary schools within the local educational agency in which programs will be conducted and a description of the needs of the schools, in terms of achievement levels of students and poverty rates;

(4) an assurance that programs will be operated in secondary schools with the greatest need for assistance, in terms of achievement levels and poverty rates;

(5) an assurance that parents of eligible students will be involved in the development and implementation of programs under this part;

(6) a statement of the methods which will be used—

(A) to ensure that the programs will serve eligible students most in need of the activities and services provided by this part; and

(B) an assurance that services will be provided under this part to special populations, such as individuals with limited English proficiency and individuals with handicaps;

(7) an assurance that the program will be of sufficient size, scope, and quality to offer reasonable promise of success;

(8) a description of the manner in which the agency will provide for equitable participation of private school students as provided under section 1017 of this Act;

(9) a description of the methods by which the applicant will coordinate programs under this part with programs for the eligible student population operated by community-based organizations, social service organizations and agencies, private sector entities, and other agencies, organizations, and institutions, and with programs conducted under the Carl D. Perkins Vocational Education Act, the Job Training Partnership Act, and other relevant Acts; and

(10) such other information as the Secretary may require to determine the nature and quality of the proposed project and the applicant's ability to carry out the project.

(c) APPROVAL OF APPLICATIONS.—(1) The Secretary shall, in approving applications under this section, give special consideration to programs that—

(A) demonstrate the greatest need for services assisted under this part based on their numbers or proportions of secondary school children from low-income families and numbers or proportions of low-achieving secondary school children; and

(B) offer innovative approaches to improving achievement among eligible secondary school children and offer approaches which show promise for replication and dissemination.

(2) The Secretary shall ensure that programs for which applications are approved under this section are representative of urban and rural regions in the United States.

(d) ADMINISTRATIVE COSTS.—Not more than 5 percent of any grant under this part may be used for administrative costs.

(20 U.S.C. 3266)

PART C—GENERAL PROVISIONS

SEC. 6201. GENERAL PROVISIONS.

(a) DEFINITION OF SCHOOL DROPOUT.—The Secretary shall, not later than 60 days after the date of the enactment of this title, establish a standard definition of a school dropout, after consultation with pertinent organizations and groups. If the Secretary has defined the term "school dropout" for fiscal year 1988 that definition shall apply for the purposes of this section.

(b) TIMELY AWARD OF GRANTS.—To the extent possible, for any fiscal year the Secretary shall award grants to local educational agencies and educational partnerships under this part not later than June 30 preceding such fiscal year.

(c) GRANTS MUST SUPPLEMENT OTHER FUNDS.—A local educational agency receiving Federal funds under this title shall use such Federal funds only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources or under provisions of Federal law other than this title for activities described in part A or part B of this title, as the case may be.

(d) EVALUATION.—The Secretary shall evaluate programs operated with funds received under this title, and shall issue a report not later than the expiration of the 6-month period following the end of the grant period.

(e) COORDINATION AND DISSEMINATION.—The Secretary shall require local educational agencies receiving grants under this title to cooperate with the coordination and dissemination efforts of the National Diffusion Network and State educational agencies.

(f) AUDIT.—The Comptroller General shall have access for the purpose of audit and examination to any books, documents, papers, and records of any local educational agency or educational partnership receiving assistance under this title that are pertinent to the sums received and disbursed under this title.

(g) WITHHOLDING PAYMENTS.—Whenever the Secretary, after reasonable notice and opportunity for a hearing to any local educational agency or educational partnership, finds that the local educational agency or educational partnership has failed to comply substantially with the provisions set forth in its application approved under section 6105 or section 6106, the Secretary shall withhold payments under this title in accordance with section 453 of the General Education Provisions Act until the Secretary is satisfied that there is no longer any failure to comply.

(20 U.S.C. 3271)

SEC. 6202. DEFINITIONS.

(a)[1] As used in this title—

(1) The term "community-based organization" means a private nonprofit organization which is representative of a community or significant segments of a community and which has a proven record of providing effective educational or related services to individuals in the community.

(2) The term "basic skills" includes reading, writing, mathematics, and computational proficiency as well as comprehension and reasoning.

(20 U.S.C. 3272)

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[1] So in original. No subsection (b) of this section has been enacted.

TITLE VII—BILINGUAL EDUCATION PROGRAMS

SEC. 7001. SHORT TITLE.

This title may be cited as the "Bilingual Education Act".

(20 U.S.C. 3281)

SEC. 7002. POLICY; APPROPRIATIONS.

(a) POLICY.—Recognizing—

(1) that there are large and growing numbers of children of limited English proficiency;

(2) that many of such children have a cultural heritage which differs from that of English proficient persons;

(3) that the Federal Government has a special and continuing obligation to assist in providing equal educational opportunity to limited English proficient children;

(4) that, regardless of the method of instruction, programs which serve limited English proficient students have the equally important goals of developing academic achievement and English proficiency;

(5) that the Federal Government has a special and continuing obligation to assist language minority students to acquire the English language proficiency that will enable them to become full and productive members of society;

(6) that the instructional use and development of a child's non-English native language promotes student self-esteem, subject matter achievement, and English-language acquisition;

(7) that a primary means by which a child learns is through the use of such child's native language and cultural heritage;

(8) that, therefore, large numbers of children of limited English proficiency have educational needs which can be met by the use of bilingual educational methods and techniques;

(9) that in some school districts establishment of bilingual education programs may be administratively impractical due to the presence of small numbers of students of a particular native language or because personnel who are qualified to provide bilingual instructional services are unavailable;

(10) that States and local school districts should be encouraged to determine appropriate curricula for limited English proficient students within their jurisdictions and to develop and implement appropriate instructional programs;

(11) that children of limited English proficiency have a high dropout rate and low median years of education;

(12) that the segregation of many groups of limited English proficient students remains a serious problem;

(13) that reliance on student evaluation procedures which are inappropriate for limited English proficient students have resulted in the disproportionate representation of limited English proficient students in special education, gifted and talented, and other special programs;

(14) that there is a serious shortage of teachers and educational personnel who are professionally trained and qualified to serve children of limited English proficiency;

(15) that many schools fail to meet the full instructional needs of limited English proficient students who also may be handicapped or gifted and talented;

(16) that both limited English proficient children and children whose primary language is English can benefit from bilingual education programs, and that such programs help develop our national linguistic resources and promote our international competitiveness;

(17) that research, evaluation, and data collection capabilities in the field of bilingual education need to be strengthened so as to better identify and promote those programs and instructional practices which result in effective education;

(18) that parent and community participation in bilingual education programs contributes to program effectiveness; and

(19) that because of limited English proficiency, many adults are not able to participate fully in national life, and that limited English proficient parents are often not able to participate effectively in their children's education,

the Congress declares it to be the policy of the United States, in order to establish equal educational opportunity for all children and to promote educational excellence (A) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods, (B) to encourage the establishment of special alternative instructional programs for students of limited English proficiency in school districts where the establishment of bilingual education programs is not practicable or for other appropriate reasons, and (C) for those purposes, to provide financial assistance to local educational agencies, and, for certain related purposes, to State educational agencies, institutions of higher education, and community organizations. The programs assisted under this title include programs in elementary and secondary schools as well as related preschool and adult programs which are designed to meet the educational needs of individuals of limited English proficiency, with particular attention to children having the greatest need for such programs. Such programs shall be designed to enable students to achieve full competence in English and to meet school grade-promotion and graduation requirements. Such programs may additionally provide for the development of student competence in a second language.

(b) AUTHORIZATION.—(1) For the purpose of carrying out the provisions of this title, there are authorized to be appropriated, subject to paragraph (6), $200,000,000 for the fiscal year 1989 and such sums as may be necessary for the fiscal year 1990 and for each succeeding fiscal year ending prior to October 1, 1993.

(2) There are further authorized to be appropriated to carry out the provisions of section 7032, subject to paragraph (6), such sums as may be necessary for the fiscal year 1989 and each of the 4 succeeding fiscal years.

(3) From the sums appropriated under paragraph (1) for part A for any fiscal year, the Secretary may reserve not to exceed 25

percent for special alternative instructional programs and related activities authorized under section 7021(a)(3) and may include programs under paragraphs (2), (4), (5), and (6) of section 7021(a).

(4) From the sums appropriated under paragraph (1) for any fiscal year, the Secretary shall reserve at least 60 percent for the programs carried out under part A of this title; and of this amount, at least 75 percent shall be reserved for the programs of transitional bilingual education carried out under section 7021(a)(1), and may include programs under paragraphs (2), (4), (5), and (6) of section 7021(a).

(5) From the sums appropriated under paragraph (1) for any fiscal year, the Secretary shall reserve at least 25 percent for training activities carried out under part C.

(6) Notwithstanding paragraphs (1) and (2), no amount in excess of $200,000,000 may be appropriated for the fiscal year 1989 to carry out the provisions of this title (including section 7032).

(7) The reservation required by paragraph (3) shall not result in changing the terms, conditions, or negotiated levels of any grant awarded in fiscal year 1987 to which section 7021(d)(1)(A), 7021(d)(1)(C), or 7021(d)(2) applies.

(20 U.S.C. 3282)

SEC. 7003. DEFINITIONS; REGULATIONS.

(a) GENERAL RULE.—The following definitions shall apply to the terms used in this title:

(1) The terms "limited English proficiency" and "limited English proficient" when used with reference to individuals means [1]—

(A) individuals who were not born in the United States or whose native language is a language other than English;

(B) individuals who come from environments where a language other than English is dominant; and

(C) individuals who are American Indian and Alaska Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency;

and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(2) The term "native language", when used with reference to an individual of limited English proficiency, means the language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

(3) The term "low-income" when used with respect to a family means an annual income for such a family which does not exceed the poverty level determined pursuant to section 1005(c)(2) of this Act.

(4)(A) The term "program of transitional bilingual education" means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, which provides, with respect to the years of study to which such program is applicable, structured English language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child's native language. Such instruction shall incorporate the cultural heritage of such children and of other children in American society. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

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[1] So in original. Probably should be "mean—".

(B) In order to prevent the segregation of children on the basis of national origin in programs of transitional bilingual education, and in order to broaden the understanding of children about languages and cultural heritages other than their own, a program of transitional bilingual education may include the participation of children whose language is English, but in no event shall the percentage of such children exceed 40 percent. The program may provide for centralization of teacher training and curriculum development, but it shall serve such children in the schools which they normally attend.

(C) In such courses or subjects of study as art, music, and physical education, a program of transitional bilingual education shall make provision for the participation of children of limited English proficiency in regular classes.

(D) Children enrolled in a program of transitional bilingual education shall, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of transitional bilingual education shall seek to insure[1] that each child is provided with instruction which is appropriate for such child's level of educational attainment.

(5)(A) The term "program of developmental bilingual education" means a full-time program of instruction in elementary and secondary schools which provides, with respect to the years of study to which such program is applicable, structured English language instruction and instruction in a second language. Such programs shall be designed to help children achieve competence in English and a second language, while mastering subject matter skills. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(B) Where possible, classes in programs of developmental bilingual education shall be comprised of approximately equal numbers of students whose native language is English and limited English proficient students whose native language is the second language of instruction and study in the program.

(6) The term "special alternative instructional programs" means programs of instruction designed for children of limited English proficiency in elementary and secondary schools. Such

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[1] So in original. Probably should be "ensure".

programs are not transitional or developmental bilingual education programs, but have specially designed curricula and are appropriate for the particular linguistic and instructional needs of the children enrolled. Such programs shall provide, with respect to the years of study to which such program is applicable, structured English language instruction and special instructional services which will allow a child to achieve competence in the English language and to meet grade-promotion and graduation standards.

(7) The term "family English literacy program" means a program of instruction designed to help limited English proficient adults and out-of-school youth achieve competence in the English language. Such programs of instruction may be conducted exclusively in English or in English and the student's native language. Where appropriate, such programs may include instruction on how parents and family members can facilitate the educational achievement of limited English proficient children. To the extent feasible, preference for participation in such programs shall be accorded to the parents and immediate family members of children enrolled in programs assisted under this title. Such programs of instruction may include instruction designed to enable aliens who are otherwise eligible for temporary resident status under section 245A of the Immigration and Nationality Act to achieve a minimal understanding of ordinary English and a knowledge and understanding of history and government of the United States as required by section 312 of such Act.

(8) The term "programs of academic excellence" means programs of transitional bilingual education, developmental bilingual education, or special alternative instruction (A) which have an established record of providing effective, academically excellent instruction; and (B) which—

(i) can be used as models for effective schools for limited English proficient students to facilitate the dissemination and use of effective teaching practices for limited English proficient students; or

(ii) which are designed to serve as models of exemplary bilingual education programs and to facilitate the dissemination of effective bilingual educational practices.

(9) The term "Office" means the Office of Bilingual Education and Minority Languages Affairs.

(10) The term "Director" means the Director of the Office of Bilingual Education and Minority Languages Affairs.

(11) The term "Secretary" means the Secretary of Education.

(12) The term "other programs for persons of limited English proficiency" when used in this title means any programs within the Department of Education directly involving bilingual education activities serving persons of limited English proficiency, such as the programs carried out in coordination with the provisions of this title pursuant to part E of title IV of the Carl D. Perkins Vocational Education Act, and section 306(b)(11) of the Adult Education Act, and programs and projects serving individuals of limited English proficiency pur-

suant to section 6(b)(4) of the Library Services and Construction Act.

(b) Regulation Requirement.—(1) In prescribing regulations under this title, the Secretary shall consult with State and local educational agencies, organizations representing persons of limited English proficiency, and organizations representing teachers and other personnel involved in bilingual education.

(2) The Secretary shall not prescribe under this title any regulations further defining the terms defined in subsection (a), or any regulations restricting or expanding the definitions set out in subsection (a).

(c) Special Information Rule.—Parents of children participating in programs assisted under this title shall be informed of the instructional goals of the program and the progress of their children in such program. Every effort shall be made to provide the information to parents pursuant to this subsection in a language and form the parents understand.

(20 U.S.C. 3283)

PART A—FINANCIAL ASSISTANCE FOR BILINGUAL EDUCATION PROGRAMS

SEC. 7021. BILINGUAL EDUCATION PROGRAMS.

(a) Uses of Funds.—Funds available for grants under this part shall be used for the establishment, operation, and improvement of—

(1) programs of transitional bilingual education;

(2) programs of developmental bilingual education;

(3) special alternative instructional programs for students of limited English proficiency;

(4) programs of academic excellence;

(5) family English literacy programs; and

(6) bilingual preschool, special education, and gifted and talented programs preparatory or supplementary to programs such as those assisted under this Act.

Programs under this subsection may use available funds to provide technology-based instruction to students in order to enhance the program.

(b) Applications.—(1) A grant may be made under subsection (a)(1), (a)(2), or (a)(3) of this section only upon application therefor by 1 or more local educational agencies or by institutions of higher education, including junior or community colleges, applying jointly with 1 or more local educational agencies.

(2) A grant may be made under subsection (a)(4), (a)(5), or (a)(6) only upon application by one or more local educational agencies; institutions of higher education, including junior or community colleges; or private nonprofit organizations, applying separately or jointly.

(c) Content of Application.—(1) Any application for a grant authorized under subsection (a) of this section shall be made to the Secretary at such time, and in such manner, as the Secretary considers appropriate.

(2) Applications for grants authorized under subsections (a)(1), (a)(2), and (a)(3) of this section shall contain information regarding—

(A) the number of children enrolled in programs conducted by the local educational agency;

(B) the number of children residing in the area served by the local educational agency who are enrolled in private schools;

(C)(i) the number of children enrolled in public and private schools in the area served by the local educational agency who are limited in their English proficiency; (ii) the method used by the applicant to make this determination; and (iii) evidence of the educational condition of the limited English proficient students, such as reading, mathematics, and subject matter test scores, and, where available, data on grade retention rates and student dropout rates;

(D) the number of limited English proficient children who are enrolled in instructional programs specifically designed to meet their educational needs, as well as descriptions of such programs;

(E) the number of limited English proficient children enrolled in public or private schools in the area served by the local educational agency who need or could benefit from education programs such as those assisted under this title;

(F) the number of children who are to receive instruction through the proposed program and the extent of their educational needs;

(G) a statement of the applicant's ability to serve children of limited English proficiency, including an assessment of the qualifications of personnel who will participate in the proposed project and of the need for further training of such personnel;

(H) the resources needed to develop and operate or improve the proposed program;

(I) the activities which would be undertaken under the grant, including training of educational personnel and parents, and how these activities will improve the educational attainment of students and expand the capacity of the applicant to operate programs such as those assisted under this Act when Federal assistance under this section is no longer available; and

(J) the specific educational goals of the proposed program and how achievement of these goals will be measured.

(3) An application for a grant under subsection (a)(3) of this section shall receive priority if the application—

(A) describes the administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language,

(B) describes the unavailability of personnel qualified to provide bilingual instructional services, or

(C) is made on behalf of a local educational agency having a small number of limited English proficient students in the schools of such agency that because of isolation or regional location is unable to obtain a native language teacher.

(4) Applications for grants authorized under subsection (a)(4) shall contain information regarding—

(A) the number of children served by the existing bilingual education program and evidence of their educational condition prior to enrollment in the program;

(B) a description of the existing program as well as the educational background and linguistic competencies of program personnel;

(C) the extent to which the program has promoted student academic achievement as indicated by objective evidence, such as improvements in language, mathematics, and subject matter test scores; grade retention rates; student dropout rates; and, where appropriate, postsecondary education and employment experiences of students;

(D) the extent of parent involvement in and satisfaction with the existing bilingual education program; and

(E) how the activities carried out under the grant would utilize and promote programs of academic excellence which employ bilingual education practices, techniques, and methods.

(5) Applications for grants authorized under subsection (a)(5) shall contain information regarding—

(A) the number of limited English proficient parents and out-of-school family members of limited English proficient students who would be served by the English literacy program;

(B) the activities which would be undertaken under the grant and how these activities will promote English literacy and enable parents and family members to assist in the education of limited English proficient children;

(C) the extent to which the persons to be served by the program have been involved in its development;

(D) applicant's prior experience and performance in providing educational programs to limited English proficient adults and out-of-school youth;

(E) with respect to applications by a local educational agency, the extent to which limited English proficient students enrolled in the educational agency are served by programs specifically designed to meet their needs; and

(F) with respect to other applicants, a description of how the applicant will coordinate its program with a local education agency to ensure that the program will help limited English proficient family members promote the academic progress of limited English proficient children.

(d) Duration of Grants.—(1)(A) Grants made pursuant to subsections (a)(1), (a)(2), and (a)(3) of this section shall be for 3 years.

(B) During the first 12 months of grants made pursuant to subsections[1] (a)(1), (a)(2), and (a)(3) of this section, an applicant may engage exclusively in preservice activities. Such activities may include program design, materials development, staff recruitment and training, development of evaluation mechanisms and procedures, and the operation of programs to involve parents in the educational program and to enable parents and family members to assist in the education of limited English proficient children.

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[1] So in original. Probably should be "subsection".

(C) Upon reapplication, grants authorized under subsections (a) (1), (2), and (3) of this section shall be renewed for 2 additional years unless the Secretary determines that—

(i) the applicant's program does not comply with the requirements set out in this title;

(ii) the applicant's program has not made substantial progress in achieving the specific educational goals set out in the original application; or

(iii) there is no longer a need for the applicant's program.

(D) Parents or legal guardians of students identified for enrollment in bilingual education programs shall be informed of (i) the reasons for the selection of their child as in need of bilingual education, (ii) the alternative educational programs that are available, and (iii) the nature of the bilingual education program and of the instructional alternatives. Parents shall also be informed that they have the option of declining enrollment of their children in such programs and shall be given an opportunity to do so if they so choose. Every effort shall be made to provide the information to parents pursuant to this subsection in a language and form the parents understand.

(2) Grants made pursuant to subsections (a)(4), (a)(5), and (a)(6) shall be for 3 years.

(3)(A) No student may be enrolled in a bilingual program for which a grant is made under subsection (a)(1) or (a)(3) of this section for a period of more than 3 years, except where the school in which the student is enrolled—

(i) conducts a comprehensive evaluation of the overall academic progress of the student, and

(ii) the results of the evaluation indicate that lack of English proficiency is impeding the academic progress of the student in meeting grade promotion and graduation standards and, in the case of a handicapped child attainment of the objective in the child's individualized education program.

Any student with respect to whom the requirements of this paragraph are met, may remain in the program for a fourth year, except as provided in division (ii) of subparagraph (B).

(B)(i) The evaluation required by paragraph (A) shall involve teachers and school personnel familiar with the students' overall academic progress. The results of such an evaluation shall be made available to the parents of the student.

(ii) An evaluation shall be carried out at the end of the fourth year the student is in the program described in subparagraph (A) if the student is to continue in the program for a fifth year and shall be conducted in accordance with division (i) of this subparagraph.

(iii) Each evaluation shall indicate how the students' English language development will be addressed during the period a student is retained in the program. The students' academic program during that period shall emphasize mastery of English.

(C) No student shall remain in a bilingual education program described in subparagraph (A) for more than 5 years.

(D) In carrying out this title, each local educational agency, institution of higher education, and private nonprofit organization having an application approved under this section may intensify instruction for limited English proficient students throughout the regular and any supplementary program by—

(i) expanding the educational calendar of the schools in which such student is enrolled to include programs before and after school and during the summer months;

(ii) lowering per pupil ratios, including the use of professional and volunteer aides; and

(iii) the application of technology to the course of instruction.

(e) Application Requirements.—An application for a grant authorized under subsections (a)(1), (a)(2), and (a)(3) of this section shall—

(1) be developed in consultation with an advisory council, of which a majority shall be parents and other representatives of the children to be served in such programs, in accordance with criteria prescribed by the Secretary;

(2) be accompanied by documentation of such consultation and by the comments which the council makes on the application;

(3) contain assurances that, after the application has been approved, the applicant will provide for the continuing consultation with, and participation by, the committee of parents, teachers, and other interested individuals which shall be selected by and predominantly composed of parents of children participating in the program, and in the case of programs carried out in secondary schools, representatives of the secondary students to be served;

(4) ensure applicant support for additional advisory council activities, if support is requested by the advisory council; and

(5) include evidence that the State educational agency has been notified of the application and has been given the opportunity to offer recommendations thereon to the applicant and to the Secretary.

(f) Approval of Applications.—An application for a grant under subsections (a)(1), (a)(2), and (a)(3) of this section may be approved only if the Secretary determines—

(1) that the program will use qualified personnel, including only those personnel who are proficient in the language or languages used for instruction;

(2) that in designing the program for which application is made, the needs of the children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public schoolchildren;

(3) that the program will be evaluated in accordance with a plan that meets the requirements of section 7033 of this title;

(4) that student evaluation and assessment procedures in the program are appropriate for limited English proficiency students, and that limited English proficient students who are handicapped are identified and served in accordance with the requirements of the Individuals with Disabilites Education Act;

(5) that Federal funds made available for the project or activity will be used so as to supplement the level of State and local funds that, in the absence of those Federal funds, would have been expended for special programs for children of limited English proficiency and in no case to supplant such State and local funds, except that nothing in this paragraph shall—

(A) preclude a local educational agency from using funds under this title for activities carried out under an order of a court of the United States or of any State respecting services to be provided such children, or to carry out a plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 with respect to services to be provided such children; or

(B) authorize any priority or preference to be assigned by the Secretary to the funding of the activities under this title;

(6) that the assistance provided under the application will contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of children of limited English proficiency, and that the applicant will have the resources and commitment to continue the program when assistance under this title is reduced or no longer available;

(7) that the applicant will provide or secure training for personnel participating, or preparing to participate, in the program which will assist them to meet State and local certification requirements and that, to the extent possible, college or university credit will be awarded for such training; and

(8) that the provision of assistance proposed in the application is consistent with criteria established by the Secretary, after consultation with the State educational agency, for the purpose of achieving an equitable distribution of assistance under this part within the State in which the applicant is located, taking into consideration—

(A) the geographic distribution of children of limited English proficiency;

(B) the relative need of persons in different geographic areas within the State for the kinds of services and activities authorized under this title;

(C) the relative ability of applicant local educational agencies within the State to provide needed services and activities; and

(D) the relative numbers of persons from low-income families who would benefit from the applicants' programs; and

(9) that the State educational agency has been notified of the application and has been given the opportunity to offer recommendations thereon to the applicant and to the Secretary.

(g) PRIORITY CONSIDERATION OF GRANTS.—An application for a grant under subsection (a)(3) of this section may receive priority based upon the information provided by the applicant pursuant to clause (A), (B), or (C) of subsection (c)(3) of this section.

(h) PRIORITY FOR PROGRAMS SERVING UNDERSERVED CHILDREN.—In the consideration of applications from local educational agencies to carry out programs authorized under this section, the Secretary shall give priority to applications from local educational agencies which are located in various geographical regions of the Nation and which propose to assist children of limited English proficiency who have historically been underserved by programs of bilingual education, taking into consideration the relative numbers of such children in the schools of such local educational agencies and the relative need for such programs. In approving such applications, the Secretary shall, to the extent feasible, allocate funds appropriated in proportion to the geographical distribution of children of limited English proficiency throughout the Nation, with due regard for the relative ability of particular local educational agencies to carry out such programs and the relative numbers of persons from low-income families who would benefit from such programs.

(i) LIMITATION ON THE ASSIGNMENT OF STUDENTS.—No action taken may involve the admission or exclusion of students to or from any federally assisted education programs merely on the basis of the surnames of such students.

(j) PROGRAMS IN PUERTO RICO.—Programs authorized under this title in the Commonwealth of Puerto Rico may, notwithstanding any other provision of this title, include programs of instruction, teacher training, curriculum development, research, evaluation, and testing designed to improve the English proficiency of children, and may also make provision for serving the needs of students of limited proficiency in Spanish.

(k) BYPASS PROVISION.—If the Secretary determines that an applicant for assistance under this title is unable or unwilling to provide for the participation in the program for which assistance is sought of children of limited English proficiency enrolled in nonprofit, private schools, as required by subsection (f)(2) of this section, the Secretary shall—

(1) withhold approval of such application until the applicant demonstrates that it is in compliance with those requirements; or

(2) reduce the amount of the grant to such applicant by the amount which is required for the Secretary to arrange (such as through a contract with a nonprofit, nonsectarian agency, organization, or institution) to assess the needs of the children in the area to be served for programs of the type authorized in this title and to carry out such programs for the children.

(20 U.S.C. 3291)

SEC. 7022. INDIAN CHILDREN IN SCHOOLS.

(a) ELIGIBLE ENTITIES.—For the purpose of carrying out programs under this title for individuals served by elementary, secondary, or postsecondary schools operated predominantly for Indian or Alaskan Native children, an Indian tribe or a tribally sanctioned educational authority may be considered to be a local educational agency as such term is used in this title, subject to the following qualifications:

(1) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (85 Stat. 688) which is recognized for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) The term "tribally sanctioned educational authority" means any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe, as well as any nonprofit institution or organization which is chartered by the governing body of an Indian tribe to operate any such school or otherwise to oversee delivery of educational services to members of that tribe and which is approved by the Secretary for the purposes of this section.

(b) Bureau of Indian Affairs Schools.—From the sums appropriated pursuant to section 7002(b), the Secretary is authorized to make payments to the applicants to carry out programs of bilingual education for Indian children on reservations served by elementary and secondary schools operated or funded by the Bureau of Indian Affairs.

(c) Annual Report.—The Assistant Secretary of the Interior for the Bureau of Indian Affairs shall submit to the Congress, the President, and the Secretary by September 30 of each year an annual report which provides—

(1) an assessment of the needs of the Indian children with respect to the purposes of this title in schools operated or funded by the Department of the Interior, including those tribes and local educational agencies receiving assistance under the Johnson-O'Malley Act (25 U.S.C. 452 et seq.); and

(2) an assessment of the extent to which such needs are being met by funds provided to such schools for educational purposes through the Secretary of the Interior.

(20 U.S.C. 3292)

PART B—DATA COLLECTION, EVALUATION, AND RESEARCH

SEC. 7031. USE OF FUNDS.

Funds available under this part shall be used for (1) collecting data on the number of limited English proficient persons and the educational services available to such persons, (2) evaluating the operation and effectiveness of programs assisted under this title, (3) conducting research to improve the effectiveness of bilingual education programs, and (4) collecting, analyzing, and disseminating data and information on bilingual education.

(20 U.S.C. 3301)

SEC. 7032. GRANTS FOR STATE PROGRAMS.

(a) DATA COLLECTION AND DISSEMINATION.—Upon application from a State educational agency, the Secretary shall make provision for the submission and approval of a State program for the collection, aggregation, analysis, and publication of data and information on the State's population of limited English proficient persons and the educational services provided or available to such persons.

(b) REPORT TO SECRETARY.—State programs under this part shall provide for the annual submission of a report to the Secretary containing data and information on such matters as the Secretary shall, by regulation, determine necessary and proper to achieve the purposes of this title, including the matters specified in section 7021(c)(2). Such reports shall be in such form and shall be submitted on such date as the Secretary shall specify by regulation. State programs shall provide for the dissemination of information regarding these matters to the public, and particularly to persons of limited English proficiency.

(c) OTHER USES OF FUNDS.—State programs authorized under this section may also provide for—

(1) the planning and development of educational programs such as those assisted under this title;

(2) the review and evaluation of programs of bilingual education, including bilingual education programs that are not funded under this title;

(3) the provision, coordination, or supervision of technical and other forms of nonfinancial assistance to local educational agencies, community organizations, and private elementary and secondary schools that serve limited English proficient persons;

(4) the development and administration of instruments and procedures for the assessment of the educational needs and competencies of persons of limited English proficiency;

(5) the training of State and local educational agency staff to carry out the purposes of this title; and

(6) other activities and services designed to build the capacity of State and local educational agencies to serve the educational needs of persons of limited English proficiency.

(d) PAYMENTS.—Except as provided in the second sentence of this subparagraph[1], the Secretary shall pay from the amounts appropriated for the purposes of this section pursuant to section 7002(b)(2) for each fiscal year to each State educational agency which has a State program submitted and approved under subsection (a) of this section such sums as may be necessary for the proper and efficient conduct of such State program. The amount paid by the Secretary to any State educational agency under the preceding sentence for any fiscal year may not be less than $75,000 nor greater than 5 percent of the aggregate of the amounts paid under section 7021 for programs within such State in the fiscal year preceding the fiscal year to which this limitation applies.

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[1] So in original. Probably should be "subsection".

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(e) SUPPLEMENT NOT SUPPLANT.—Funds made available under this section for any fiscal year shall be used by the State educational agency to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such funds, be made available by the State for the purposes described in this section, and in no case to supplant such funds.

(20 U.S.C. 3302)

SEC. 7033. PROGRAM EVALUATION REQUIREMENTS.

The Secretary shall issue, within 6 months of the date of enactment of this section, regulations which set forth a comprehensive design for evaluating the programs assisted under part A of this title. Such regulations shall be developed by the Director in consultation with State directors of bilingual education programs, the evaluation assistance centers authorized in section 7034, and individuals and organizations with expertise in testing and evaluation of educational programs for children of limited English proficiency. Such regulations shall provide for the collection of information and data including—

(1) the educational background, needs, and competencies of the limited English proficient persons served by the program;

(2) the specific educational activities undertaken pursuant to the program; the pedagogical materials, methods, and techniques utilized in the program; and, with respect to classroom activities, the relative amount of instructional time spent with students on specified tasks;

(3) the educational and professional qualifications, including language competencies, of the staff responsible for planning and operating the program;

(4) the specific activities undertaken to improve prereferral, evaluation procedures and instructional programs for limited English proficient children who may be handicapped or gifted and talented; and

(5) the extent of educational progress achieved through the program measured, as appropriate, by (A) tests of academic achievement in English language arts, and where appropriate, second language arts; (B) tests of academic achievement in subject matter areas; and (C) changes in the rate of student grade-retention, dropout, absenteeism, placement in programs for the gifted and talented, and enrollment in postsecondary education institutions.

(20 U.S.C. 3303)

SEC. 7034. EVALUATION ASSISTANCE CENTERS.

The Secretary shall establish, through competitive grants to institutions of higher education, at least 2 evaluation assistance centers. Such centers shall provide, upon the request of State or local educational agencies, technical assistance regarding methods and techniques for identifying the educational needs and competencies of limited English proficient persons and assessing the educational progress achieved through programs such as those assisted under this title. Grants made pursuant to this section shall be for a period of 3 years.

(20 U.S.C. 3304)

SEC. 7035. RESEARCH.

(a) RESEARCH AND DEVELOPMENT.—The Secretary shall, through competitive contracts under this section, provide financial assistance for research and development proposals submitted by institutions of higher education, private for-profit and nonprofit organizations, State and local educational agencies, and individuals.

(b) AUTHORIZED ACTIVITIES.—Research activities authorized to be assisted under this section shall include—

(1) studies to determine and evaluate effective models for bilingual education programs;

(2) studies which examine the process by which individuals acquire a second language and master the subject matter skills required for grade-promotion and graduation, and which identify effective methods for teaching English and subject matter skills within the context of a bilingual education program or special alternative instructional program to students who have language proficiencies other than English;

(3) longitudinal studies to measure the effect of this title on students enrolled in title VII programs (including a longitudinal study of the impact of bilingual education programs on limited-English proficient students using a nationally representative sample of the programs funded under this title and which provides information including data on grade retention, academic performance, and dropout rates);

(4) studies to determine effective and reliable methods for identifying students who are entitled to services under this title and for determining when their English language proficiency is sufficiently well developed to permit them to derive optimal benefits from an all-English instructional program;

(5) the operation of a clearinghouse which shall collect, analyze, and disseminate information about bilingual education and related programs (and coordinate its activities with the National Diffusion Network);

(6) studies to determine effective methods of teaching English to adults who have language proficiencies other than English;

(7) studies to determine and evaluate effective methods of instruction for bilingual programs, taking into account language and cultural differences among students;

(8) studies to determine effective approaches to preservice and inservice training for teachers, taking into account the language and cultural differences of their students;

(9) studies to determine effective and reliable techniques for providing bilingual education to handicapped students;

(10) studies to determine effective and reliable methods for identifying gifted and talented students who have language proficiencies other than English; and

(11) the effect of this title on the capacity of local educational agencies to operate bilingual programs following the termination of assistance under this title.

(c) CONSULTATION AND DELEGATION OF AUTHORITY.—In carrying out the responsibilities of this section, the Secretary may delegate authority to the Director, and in any event, shall consult with the Director, representatives of State and local educational agencies, appropriate groups and organizations involved in bilingual education, the Committee on Labor and Human Resources of the Senate, and the Committee on Education and Labor of the House of Representatives.

(d) PUBLICATION OF PROPOSALS.—The Secretary shall publish and disseminate all requests for proposals in research and development assisted under this title.

(e) LIMITATION OF AUTHORITY.—Nothing in this title shall be construed as authorizing the Secretary to conduct or support studies or analyses of the content of educational textbooks.

(20 U.S.C. 3305)

SEC. 7036. COORDINATION OF RESEARCH.

Notwithstanding section 405(b)(1) of the General Education Provisions Act, the Assistant Secretary for Educational Research and Improvement shall consult with the Director, the Committee on Labor and Human Resources of the Senate, and the Committee on Education and Labor of the House of Representatives to ensure that research activities undertaken pursuant to section 405(b)(2)(C) of the General Education Provisions Act complement and do not duplicate the activities conducted pursuant to this part.

(20 U.S.C. 3306)

SEC. 7037. EDUCATION STATISTICS.

(a) DATA COLLECTION.—Notwithstanding section 406 of the General Education Provisions Act, the National Center for Education Statistics shall collect and publish, as part of its annual report on the condition of education, data for States, the Commonwealth of Puerto Rico, and the trust territories with respect to the population of limited English proficient persons, the special educational services and programs available to limited English proficient persons, and the availability of educational personnel qualified to provide special educational services and programs to limited English proficient persons.

(b) USE OF DATA.—In carrying out its responsibilities under this section, the National Center for Education Statistics shall utilize, to the extent feasible, data submitted to the Department of Education by State and local educational agencies and institutions of higher education pursuant to the provisions of this title as well as data collected on limited English proficient persons by other Federal agencies.

(20 U.S.C. 3307)

PART C—TRAINING AND TECHNICAL ASSISTANCE

SEC. 7041. USE OF FUNDS.

(a) USE OF FUNDS.—Funds available under this part shall be used for—

(1) the establishment, operation, and improvement of training programs for educational personnel preparing to participate in, or personnel participating in, the conduct of programs of bilingual education or special alternative instructional programs for limited English proficient students, which shall emphasize opportunities for career development, advance-

ment, and lateral mobility, and may provide training to teachers, administrators, counselors, paraprofessionals, teacher aides, and parents;

(2) the training of persons to teach and counsel such persons;

(3) the encouragement of reform, innovation, and improvement in applicable education curricula in graduate education, in the structure of the academic profession, and in recruitment and retention of higher education and graduate school faculties, as related to bilingual education;

(4) the operation of short-term training institutes designed to improve the skills of participants in programs of bilingual education or special alternative instructional programs for limited English proficient students; which may include summer programs designed to improve the instructional competence of educational personnel in the languages used in the program; and

(5) the provision of inservice training and technical assistance to parents and educational personnel participating in, or preparing to participate in, bilingual education programs or special alternative instructional programs for limited English proficient students.

(b) APPLICATIONS.—(1) A grant or contract may be made under subsection (a)(1), (a)(2), or (a)(3) of this section upon application of an institution of higher education.

(2) A grant or contract may be made under subsection (a)(4) of this section upon application of (A) institutions of higher education (including junior colleges and community colleges) and private for-profit or nonprofit organizations which apply, after consultation with, or jointly with, one or more local educational agencies or a State educational agency; (B) local educational agencies; or (C) a State educational agency.

(3) A grant or contract may be made under subsection (a)(5) of this section upon application of (A) institutions of higher education (including junior colleges and community colleges), (B) private for-profit or nonprofit organizations, or (C) a State educational agency.

(c) APPLICATION REQUIREMENT FOR TRAINING PROGRAMS.—An application for a grant or contract for preservice or inservice training activities described in subsection (a)(1) of this section shall be developed in consultation with an advisory council composed of representatives of State and local educational agencies within the applicant's service area or geographic region which operate programs of bilingual education or special alternative instruction for limited English proficient students.

(d) TRAINING PROGRAM REQUIREMENTS.—A preservice or inservice training program funded under subsection (a)(1) shall assist educational personnel in meeting State and local certification requirements, and, whenever possible, should award college or university credit.

(e) PREFERENCE IN ASSISTANCE AND PURPOSE OF TRAINING.—(1) In making a grant or contract for preservice training programs described in subsection (a)(1) of this section, the Secretary shall give preference to programs which contain coursework in—

(A) teaching English as a second language;

(B) use of a non-English language for instructional purposes;

(C) linguistics; and

(D) evaluation and assessment;

and which involve parents in the educational process.

(2) Preservice training programs shall be designed to ensure that participants become proficient in English and a second language of instruction.

(20 U.S.C. 3321)

SEC. 7042. MULTIFUNCTIONAL RESOURCE CENTERS.

(a) ESTABLISHMENT.—Pursuant to subsection (a)(5) of section 7041, the Secretary shall establish, through competitive grants or contracts, at least 16 multifunctional resource centers (hereafter [1] in this section referred to as "centers"). Grants and contracts shall be awarded with consideration given to the geographic and linguistic distribution of children of limited English proficiency.

(b) REQUIRED SERVICES.—In addition to providing technical assistance and training to persons participating in or preparing to participate in bilingual education programs or special alternative instructional programs for limited English proficient students, each center shall be responsible for gathering and providing information to other centers on a particular area of bilingual education, including (but not limited to) bilingual special education, bilingual education for gifted and talented limited English proficient students, bilingual vocational education, bilingual adult education, bilingual education program administration, literacy, education technology in bilingual programs, mathematics and science education in bilingual programs, counseling limited English proficient students, and career education programs for limited English proficient students.

(20 U.S.C. 3322)

SEC. 7043. FELLOWSHIPS.

(a) AUTHORIZATION.—Pursuant to subsection (a)(2) of section 7041, the Secretary is authorized to award fellowships for advanced study of bilingual education or special alternative instructional programs for limited English proficient students in such areas as teacher training, program administration, research and evaluation, and curriculum development. For fiscal year 1989 and each of the 4 subsequent fiscal years, not less than 500 fellowships leading to a masters or doctorate degree shall be awarded under the preceding sentence. Such fellowships shall be awarded, to the extent feasible, in proportion to the needs of various groups of individuals with limited English proficiency. In awarding fellowships, the Secretary shall give preference to individuals intending to study bilingual education or special alternative instructional programs for limited English proficient students in the following specialized areas: vocational education, adult education, gifted and talented education, special education, education technology, literacy, and mathematics and science education. The Secretary shall include information on the operation of the fellowship program in the report required under section 7051(c) of this title.

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[1] So in original. Probably should be "hereinafter".

(b) FELLOWSHIP REQUIREMENTS.—Any person receiving a fellowship under this section shall agree either to repay such assistance or to work for a period equivalent to the period of time during which such person received assistance, and such work shall be in an activity related to programs and activities such as those authorized under this Act. The Secretary may waive this requirement in extraordinary circumstances.

(20 U.S.C. 3323)

SEC. 7044. PRIORITY.

In making grants or contracts under this part, the Secretary shall give priority to eligible applicants with demonstrated competence and experience in programs and activities such as those authorized under this Act.

(20 U.S.C. 3324)

SEC. 7045. STIPENDS.

In the terms of any arrangement described in this part, the Secretary shall provide for the payment, to persons participating in training programs so described, of such stipends (including allowances for subsistence and other expenses for such persons and their dependents) as the Secretary may determine to be consistent with prevailing practices under comparable federally supported programs.

(20 U.S.C. 3325)

PART D—ADMINISTRATION

SEC. 7051. OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS.

(a) ESTABLISHMENT.—There shall be, in the Department of Education, an Office of Bilingual Education and Minority Languages Affairs (hereafter[1] in this section referred to as the "Office") through which the Secretary shall carry out functions relating to bilingual education.

(b) DIRECTOR.—(1) The Office shall be headed by a Director of Bilingual Education and Minority Languages Affairs, appointed by the Secretary, to whom the Secretary shall delegate all delegable functions relating to bilingual education. The Director shall also be assigned responsibility for coordinating the bilingual education aspects of other programs administered by the Secretary.

(2) The Office shall be organized as the Director determines to be appropriate in order to enable the Director to carry out such functions and responsibilities effectively, except that there shall be a division, within the Office, which is exclusively responsible for the collection, aggregation, analysis, and publication of data and information on the operation and effectiveness of programs assisted under this title.

(3) The Director shall prepare and, not later than February 1 of each year, shall submit to Congress and the President a report on—

(A) the grants and contracts made pursuant to this title in the preceding fiscal year;

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[1] So in original. Probably should be "hereinafter".

(B) the number of individuals benefiting from the programs assisted under this title;

(C) the evaluation of activities carried out under this title during the preceding 2 fiscal years and the extent to which each of such activities achieves the policy set forth in section 7002(a);

(D) an estimate of the number of fellowships in the field of training teachers for bilingual education which will be necessary for the 2 succeeding fiscal years; and

(E) the research activities carried out under such title during the preceding 2 fiscal years and the major findings of research studies.

(c) COORDINATION WITH RELATED PROGRAMS.—In order to maximize Federal efforts aimed at serving the educational needs of children of limited English proficiency, the Secretary shall coordinate and ensure close cooperation with other programs administered by the Department of Education, including such areas as teacher training, program content, research, and curriculum. The Secretary's report under section 6213 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 shall include demonstration that such coordination has taken place.

(d) STAFFING REQUIREMENT.—The Secretary shall ensure that the Office of Bilingual Education and Minority Language Affairs is staffed with sufficient personnel trained, or with experience in, bilingual education to discharge effectively the provisions of this title.

(e) READING AND SCORING APPLICATIONS.—For the purpose of reading and scoring applications for competitive grants authorized under parts A and C of this title, the Secretary shall use persons who are not otherwise employed by the Federal Government and who are experienced and involved in educational programs similar to those assisted under parts A and C of this title. The Secretary shall solicit nominations for application readers from State directors of bilingual education and may use funds appropriated for parts A and C of this title to pay for the application reading and scoring services required by this provision.

(20 U.S.C. 3331)

SEC. 7052. LIMITATION OF AUTHORITY.

The Secretary shall not impose restrictions on the availability or use of funds authorized under this title other than those set out in this title or other applicable Federal statutes and regulations.

(20 U.S.C. 3332)

PART E—TRANSITION

SEC. 7063. TRANSITION.

This title shall not apply to grants and contracts entered into under the Bilingual Education Act as in effect before October 1, 1988.

(20 U.S.C. 3341)

TITLE X[1]—GENERAL PROVISIONS

DEFINITIONS

SEC. 8001. Except as otherwise provided, the terms used in this Act have the same meanings provided in section 1471 of this Act.

(20 U.S.C. 3381)

FEDERAL ADMINISTRATION

SEC. 8002. In administering the provisions of this Act and any Act amended by this Act, the Commissioner shall consult with other Federal departments and agencies administering programs which may be effectively coordinated with programs carried out pursuant to such Acts, and to the extent practicable for the purposes of such Acts shall coordinate such programs on the Federal level with the programs being administered by such other departments and agencies. Federal departments and agencies administering programs which may be effectively coordinated with programs carried out under this Act or any Act amended by this Act, including community action programs carried out under title II of the Economic Opportunity Act of 1964, shall, to the fullest extent permitted by other applicable law, carry out such programs in such a manner as to assist in carrying out, and to make more effective, the programs under this Act or any Act amended by this Act.

(20 U.S.C. 3382)

WAIVER OF REQUIREMENTS FOR CERTAIN JURISDICTIONS

SEC. 8003. (a)(1) If the Commissioner determines that compliance with any of the requirements of this Act, or the Education Consolidation and Improvement Act of 1981 by Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands is impractical or inappropriate because of conditions or circumstances particular to any of such jurisdictions, he may waive any of those requirements upon the request of the State educational agency for such jurisdiction. At least thirty days prior to approving any such request for a waiver, the Commissioner shall publish in the Federal Register a notice of his intent to grant such a waiver and the terms and conditions upon which such a waiver will be granted.

(2) Any waiver of requirements under this subsection shall be subject to such terms and conditions as the Commissioner deems necessary to carry out the purposes of this Act, including the submission by the jurisdiction concerned of a plan for the management of the funds in a manner designed to achieve the purposes of this Act.

(b)(1) If the Commissioner determines that compliance with any of the requirements of title I by Puerto Rico is impractical or inappropriate because of conditions or circumstances particular to that jurisdiction, he may waive any of those requirements upon the request of the State educational agency for that jurisdiction. At least thirty days prior to approving any such request for a waiver, the Commissioner shall publish in the Federal Register a notice of his intent to grant such waiver and the terms and conditions upon which such a waiver will be granted.

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[1] So in law. Probably should be title VIII.

(2) Any waiver of requirements under this subsection shall be subject to such terms and conditions as the Commissioner deems necessary to carry out the purposes of title I, including the submission by Puerto Rico of a plan for the management of the funds provided under such title, in order to insure that those funds are used in a manner designed to achieve the purposes of such title.

(3) No waiver may be granted under this subsection after July 1, 1980, or apply to any period after such date.

(20 U.S.C. 3383)

LIMITATION ON PAYMENTS UNDER THIS ACT

SEC. 8004. Nothing contained in this Act shall be construed to authorize the making of any payment under this Act, or under any Act amended by this Act, for religious worship or instruction.

(20 U.S.C. 3384)

OPEN MEETINGS OF EDUCATIONAL AGENCIES

SEC. 8005. No application for assistance under this Act may be considered unless the local educational agency making such application certifies to the Commissioner that members of the public have been afforded the opportunity upon reasonable notice to testify or otherwise comment regarding the subject matter of the application. The Commissioner is authorized and directed to establish such regulations as necessary to implement this section.

(20 U.S.C. 3386)

OMNIBUS BUDGET RECONCILIATION ACT OF 1981

[Public Law 97-35, August 13, 1981 (95 Stat. 357)]

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TITLE VI—HUMAN SERVICES PROGRAMS

Subtitle A—Authorizations Savings for Fiscal Years 1982, 1983, and 1984

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CHAPTER 8—COMMUNITY SERVICES PROGRAMS

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Subchapter D—Follow Through Programs

SHORT TITLE

SEC. 661. This subchapter may be cited as the "Follow Through Act".

(42 U.S.C. 9801 note) Enacted August 13, 1981, P.L. 97–35, 95 Stat. 508.

PART I—DIRECT SERVICES

FINANCIAL ASSISTANCE FOR FOLLOW THROUGH PROGRAMS

SEC. 662. (a) The Secretary of Education (hereinafter in this subchapter referred to as the "Secretary") is authorized to provide financial assistance in the form of grants to local educational agencies, combinations of such agencies, and, as provided in subsection (b), any other public or appropriate nonprofit private agencies, organizations, and institutions for the purpose of carrying out Follow Through programs focused primarily on children from low-income families in kindergarten and primary grades, including such children enrolled in private nonprofit elementary schools, who were previously enrolled in Head Start or similar quality pre-school programs. Other children in kindergarten and primary grades, including such other children enrolled in private nonprofit elementary schools, who were previously enrolled in preschool programs of a compensatory nature which received Federal financial assistance may participate in such Follow Through programs. For the purpose of making grants under this section, the Secretary shall give priority to any local educational agency that requests the grant for purposes of carrying out a Follow Through program in a school that—

(1) is designated as a schoolwide project under section 1015(a) of the Elementary and Secondary Education Act of 1965; and

(2) has a high concentration of children described in the first sentence of this subsection.

(b) Whenever the Secretary determines—

(1) that a local educational agency receiving assistance under subsection (a) is unable or unwilling to include in a Follow Through program children enrolled in nonprofit private schools who would otherwise be eligible to participate therein; or

(2) that it is otherwise necessary in order to accomplish the purposes of this section;

the Secretary may provide financial assistance for the purpose of carrying out a Follow Through program to any other public or appropriate nonprofit private agency, organization, or institution.

(c) Programs to be assisted under this part shall use model Follow Through approaches for which financial assistance is provided under section 664A and shall provide directly, through referral or a program established under the Head Start Transition Project Act, or by using any combination of these methods, comprehensive educational, health, nutritional, social, and other services as will aid in the continued development of children described in subsection (a) to their full potential. Such programs shall provide for the direct participation of the parents of such children in the development, conduct, and overall direction of the program at the local level. If the Secretary determines that participation in the program of children who are not from low-income families will serve to carry out the purposes of this section, the Secretary may provide for the inclusion of such children from non-low-income families, but only to the extent that their participation will not dilute the effectiveness of the services designed for children described in subsection (a).

(d) The Secretary may not refuse to provide financial assistance under subsection (a) to an applicant solely because such applicant proposes to carry out a Follow Through program during a period in which school is not in regular session, at more than one site, or both.

(e)(1) In making grants under subsection (a), the Secretary shall provide sufficient funds to enable programs to meet the requirements of subsection (c).

(2) If the aggregate amount appropriated for a fiscal year to carry out this subchapter exceeds $15,000,000, the amount of each such grant shall be not less than $200,000.

(f) Notwithstanding subsection (c), any local educational agency that receives a grant under subsection (a) for purposes of carrying out a Follow Through program in an elementary school that—

(A) receives funds under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965; and

(B) is designated as a schoolwide project under section 1015(a) of such Act;

may use such grant to serve all children attending such school in kindergarten through grade 3.

(42 U.S.C. 9861) Enacted August 13, 1981, P.L. 97-35, 95 Stat. 508; amended Nov. 3, 1990, P.L. 101-501, sec. 202, 104 Stat. 1243-44.

CONSIDERATION OF APPLICATIONS

SEC. 663. (a) IN GENERAL.—A grant under this part may be made only to an applicant that submits an application to the Secretary containing such information as may be required by the Secretary by rule.

(b) CONTENTS OF APPLICATION.—Each application for a grant under this part shall—

(1) provide that the program for which assistance is requested will be administered by or under the supervison of the applicant;

(2) contain an assurance that the applicant will prepare, and submit to the Secretary, regular evaluations of and reports concerning such program;

(3) estimate the number of children who are eligible for Follow Through services in the geographical area served by such program and the approximate number to be served by such program;

(4) describe which model Follow Through approach the applicant intends to use, and the manner in which the applicant will implement such approach;

(5) provide evidence that the applicant has made a formal arrangement to receive technical assistance and training relative to such approach from an appropriate agency, institution, or organization that receives funds under section 664A;

(6) provide an assurance that the instructional program, including textbooks and other materials provided by the applicant, is appropriate to the ages and developmental needs of the children to be served by such program and to the model Follow Through approach selected;

(7) specify the manner in which the applicant will provide comprehensive services, including through agreements with public or private entities to provide, make referrals to, or coordinate the provision of such services to children and their families through the program established under subchapter B, the Head Start Transition Project Act, or another comprehensive program;

(8) provide for direct participation of parents, as provided in section 662(c), and include a cerification that such application has been approved by a committee (established in accordance with rules issued by the Secretary) that represents parents of children who participate, and parents of children who are likely to participate, in such program;

(9) describe how the applicant proposes to coordinate services under this part with services under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, the Bilingual Education Act, and the Individuals with Disabilities Education Act of 1975[1];

(10) demonstrate that—

(A) the applicant has entered into a formal arrangement with local Head Start programs and other preschool programs for such cooperation and activities as are necessary to ensure an effective transition of eligible children entering the Follow Through program carried out by such applicant; and

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[1] So in law. The phrase "of 1975" should probably be striken.

(B) the Follow Through activities to be provided by the applicant have been specifically designed to coordinate with, and build on, those activities provided to participants in local Head Start or other similar preschool programs;

(11) describe the expected or, if possible, actual impact of such program on the applicant's regular school program; and

(12) contain—

(A) a certification that the applicant submitted such application to the State educational agency (as defined in section 1471(23) of the Elementary and Secondary Education Act of 1965) for a reasonable period for comment before submitting such application to the Secretary; and

(B) any comments received from such agency during such period.

(42 U.S.C. 9862) Enacted Nov. 3, 1990, P.L. 101–501, sec. 203, 104 Stat. 1244–45; amended October 7, 1991, P.L. 102–119, sec. 26(c), 105 Stat. 607.

PART II—PROGRAM IMPROVEMENT

RESEARCH

SEC. 664. The Secretary may provide financial assistance, through grants and contracts, to public and private nonprofit agencies, institutions, and organizations to conduct research—

(1) to improve Follow Through approaches;

(2) to develop model Follow Through approaches; and

(3) to meet the special needs of children who are eligible to participate in Follow Through programs.

(42 U.S.C. 9863) Enacted Nov. 3, 1990, P.L. 101–501, sec. 204, 104 Stat. 1245.

TECHNICAL ASSISTANCE AND TRAINING

SEC. 664A. (a) The Secretary shall make grants to public and private nonprofit agencies, institutions, and organizations—

(1) to provide technical assistance to assist in the development, implementation, and expanded use of model Follow Through approaches; and

(2) to provide training in conjunction with the operation of Follow Through programs or other programs that adopt such approaches.

(b)(1) Technical assistance with respect to a particular model Follow Through approach may not be provided under subsection (a)(1) in more than 5 fiscal years to a particular recipient of financial assistance under section 662(a).

(2) In the case of a recipient of financial assistance under section 662(a) that has received technical assistance prior to the date of enactment of this part, the Secretary may limit the provision of technical assistance with respect to a particular Follow Through approach under subsection (a)(1) to 3 fiscal years.

(42 U.S.C. 9863a) Enacted Nov. 3, 1990, P.L. 101–501, sec. 204(a), 104 Stat. 1245–46.

RESOURCE AND EXPANSION

SEC. 664B. The Secretary may make grants to entities which operate, or previously operated, Follow Through programs that the Secretary finds to be effective—

(1) to act as Follow Through resources to develop and provide information on the operation of their respective programs;

(2) to promote the adoption of similar programs by local educational agencies; and

(3) to assist agencies, institutions, and organizations that receive funds under section 664A, in providing technical assistance and training.

(42 U.S.C. 9863b) Enacted Nov. 3, 1990, P.L. 101–501, sec. 204(a), 104 Stat. 1246.

NATIONAL CLEARINGHOUSE

SEC. 664C. (a) If the amount appropriated to carry out this subchapter is not less than $30,000,000, then the Secretary shall make a grant to an organization that represents entities referred to in sections 662, 664A, and 664B to establish a national clearinghouse on Follow Through programs (hereinafter in this section referred to as the clearinghouse), which shall provide information, without charge or at such reasonable cost as the Secretary may determine, to the public concerning—

(1) programs that receive financial assistance under section 662;

(2) model Follow Through approaches;

(3) the kinds of technical assistance and training available under section 664A;

(4) the procedure to obtain technical assistance and training available under section 664A; and

(5) Follow Through research and evaluations.

(b) The Secretary shall make available to the clearinghouse all research and evaluations that relate to Follow Through programs and for which the Secretary provides, or has ever provided, funds.

(c)(1) The Secretary shall promote the awareness and use of model Follow Through approaches by—

(A) providing information to recipients of grants and contracts under section 1562 of the Elementary and Secondary Education Act of 1965 concerning programs and activities that receive assistance under this title[1]; and

(B) making information concerning such programs and activities available to such recipients without charge.

(2) From amounts appropriated for each fiscal year to carry out this part, the Secretary shall expend—

(A) not less than $100,000 to pay for the costs incurred by such recipients to disseminate information relating to programs and activities funded under this part; and

(B) not less than $300,000 to carry out subsection (a).

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[1] So in original. Probably should be "subchapter".

(42 U.S.C. 9863c) Enacted Nov. 3, 1990, P.L. 101-501, sec. 204(a), 104 Stat. 1246.

ANNOUNCEMENT OF RESEARCH AND EVALUATION CONTRACTS

SEC. 665. (a) The Secretary shall make a public announcement concerning—

(1) the title, purpose, intended completion date, identity of the grantee or contractor, and proposed cost of any grant or contract with a private or non-Federal public agency or organization for any research or evaluation under this subchapter; and

(2) the results, findings, data, or recommendations made or reported as a result of such activities.

(b) The public announcements required by subsection (a)(1) shall be made not later than 30 days after making such grants or contracts, and the public announcements required by subsection (a)(2) shall be made not later than 90 days after the receipt of such results.

(c) The Secretary shall take necessary action to assure that all studies, proposals, and data produced or developed with Federal funds employed under this subchapter shall become the property of the United States.

(d) The Secretary shall publish summaries of the results of activities carried out pursuant to this subchapter not later than 90 days after the completion thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such summaries.

(42 U.S.C. 9864) Enacted August 13, 1981, P.L. 97-35, 95 Stat. 510; amended Nov. 3, 1990, P.L. 101-501, sec. 205, 104 Stat. 1246.

EVALUATION

SEC. 666. (a)(1) The Secretary shall provide, directly or through grants or contracts, for the continuing evaluation of programs under this subchapter, including evaluations that measure and evaluate the impact of programs authorized by this subchapter, in order to determine their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanism for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such programs. Such continuing evaluation shall measure the impact of such programs on participating parents and on entire schools and school districts in which such programs are carried out.

(2) The evaluation required by paragraph (1) shall include evaluations of local educational agencies that receive Follow Through grants for use in a school that is designated as a schoolwide project under section 1015(a) of the Elementary and Secondary Education Act of 1965. Such evaluation shall compare children who only receive services under a grant under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 with children who receive services under such a grant and under a Follow Through grant for the purposes of determining whether the comprehensive services provided to the latter children through the model Follow Through approach had a positive effect on their educational progress and overall developmental progress. To the

extent practicable, such comparison shall be made on the basis of results of evaluations conducted under such chapter and evaluations conducted under this subsection, and shall take into account the amount of funds provided to the project.

(b) The Secretary shall develop and publish general standards for evaluation of program and project effectiveness in achieving the objectives of this subchapter. The extent to which such standards have been met shall be considered in deciding whether to renew or supplement financial assistance authorized under this subchapter.

(c) In carrying out evaluations under this subchapter, the Secretary shall, whenever feasible, arrange to obtain the specific views of persons participating in and served by programs and project assisted under this subchapter about such programs and projects.

(d) The Secretary shall publish the results of evaluative research and summaries of evaluations of program and project impact and effectiveness not later than 90 days after the completion thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such research studies and evaluation summaries.

(e) The Secretary shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with assistance under this section become the property of the United States.

(42 U.S.C. 9865) Enacted August 13, 1981, P.L. 97–35, 95 Stat. 510; amended Nov. 3, 1990, P.L. 101–501, sec. 206, 104 Stat. 1247.

Part III—General and Administrative Provisions

AUTHORIZATION OF APPROPRIATIONS

Sec. 667. (a) There are authorized to be appropriated to carry out this subchapter $20,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994.

(b) Of the amount appropriated for each fiscal year to carry out this subchapter—

(1) 70 percent shall be available to carry out part I; and

(2) 30 percent shall be available to carry out part II.

(c)(1) Except as provided in paragraph (4), financial assistance provided under part I for a Follow Through program shall not exceed 80 percent of the approved costs of the program assisted, except that the Secretary may approve assistance in excess of such percentage if the Secretary determines, in accordance with rules establishing objective criteria, that such action is required to carry out such part.

(2) Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, and services.

(3) The Secretary may not require non-Federal contributions in excess of 20 percent of the approved costs of the Follow Through program assisted.

(4) Financial assistance provided under part I for a Follow Through program carried out in an elementary school that—

(A) receives funds under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965; and

(B) is designated as a schoolwide project under section 1015(a) of such Act;

may be expended to pay 100 percent of the approved costs of the program assisted.

(d) An application for assistance under this subchapter may not be approved unless the Secretary is satisfied that the services to be provided under this chapter[1] by such applicant will be in addition to, and not in substitution for, services previously provided without Federal assistance. The requirement imposed by the preceding sentence shall be subject to such rules as the Secretary may issue.

(42 U.S.C. 9866) Enacted Nov. 3, 1990, sec. 207(a), 104 Stat. 1247–48.

SPECIAL CONDITIONS

SEC. 668. (a) Recipients of financial assistance under part I shall provide maximum employment opportunities for residents of the area to be served, and to parents of children who are participating in programs and programs and[2] projects assisted under part I.

(b) Financial assistance under part I shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(42 U.S.C. 9867) Enacted August 13, 1981, P.L. 97–35, 95 Stat. 511; amended Sept. 30, 1986, P.L. 99–425, sec. 201(b), 100 Stat. 967; amended Nov. 3, 1990, P.L. 101–501, secs. 201(2) and 209, 104 Stat. 1243.

APPLICABILITY OF PROVISIONS OF SUBCHAPTER B

SEC. 669. The provisions of sections 637 (other than section 637(1)), 653, 654, 655, 656, and 657 shall apply to the administration of this subchapter.

(42 U.S.C. 9868) Enacted August 13, 1981, P.L. 97–35, 95 Stat. 511.

PARTICIPATION IN OTHER EDUCATIONAL ACTIVITIES

SEC. 669A. (a) The Secretary shall facilitate the participation of entities that receive funds under sections 664A and 664B in training and technical assistance activities carried out under other Federal programs that provide assistance to children in elementary schools, including programs and activities carried out under chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(b) The Secretary shall consult with the Secretary of Health and Human Services in the coordination of the program established under this Act[3] with the programs established under the Head Start Transition Project Act to enable local educational agencies to submit a single application for funding under both such programs and shall, to the extent practicable, coordinate the issuance of regulations governing such programs.

(42 U.S.C. 9869) Enacted Nov. 3, 1990, P.L. 101–501, sec. 208, 104 Stat. 1248.

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[1] So in original. Probably should be "subchapter".

[2] Sections 201(2)(B) and 209 of P.L. 101–501 each inserted "programs and".

[3] So in original. Probably should be "subchapter".

Public Law 874, 81st Congress

(Impact Aid)

TITLE I—FINANCIAL ASSISTANCE FOR LOCAL EDUCATION AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITY

DECLARATION OF POLICY

SECTION 1. (a) In recognition of the responsibility of the United States for the impact which certain Federal activities have on the local educational agencies in the areas in which such activities are carried on, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following sections of this title) for those local educational agencies upon which the United States has placed financial burdens by reason for the fact that—

(1) the revenues available to such agencies from local sources have been reduced as the result of the acquisition of real property by the United States; or

(2) such agencies provide education for children residing on Federal property; or

(3) such agencies provide education for children whose parents are employed on Federal property; or

(4) there has been a sudden and substantial increase in school attendance as the result of Federal activities.

(b) There are authorized to be appropriated $735,000,000 for fiscal year 1989, $785,000,000 for fiscal year 1990, $835,000,000 for fiscal year 1991, $885,000,000 for fiscal year 1992, and $935,000,000 for fiscal year 1993, to carry out the provisions of this Act.

(20 U.S.C. 236) Enacted Sept. 30, 1950, ch. 1124, P.L. 874, 81st Cong. sec. 1, 64 Stat. 1100; amended April 11, 1965, P.L. 89–10, Title I, sec. 2, 79 Stat. 27; amended April 28, 1988, P.L. 100–297, secs. 2011, 2012(b), 102 Stat. 294.

FEDERAL ACQUISITION OF REAL PROPERTY

SEC. 2.[1] (a) Where the Secretary, after consultation with any local educational agency and with the appropriate State educational agency, determines for any fiscal year ending prior to October 1, 1993—

(1) that the United States owns Federal property in the school district of such local educational agency, and that such property (A) has been acquired by the United States since

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[1] Section 302 of the Education Amendments of 1984 (P.L. 98–511) provides as follows:

SEC. 302. In the case of any local educational agency which the Secretary of Education determines has received, for any fiscal year after fiscal year 1976, an overpayment under section 2 of the Act of September 30, 1950 (20 U.S.C. 237) as a consequence of a recomputation of need based on revised data, the Secretary shall not require more than 10 percent of the amount of the overpayment to be repaid (or deducted from current payments) in any fiscal year.

1938, (B) was not acquired by exchange for other Federal property in the school district which the United States owned before 1939, and (C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 per centum or more of the assessed value of all real property in the school district (similarly determined as of the time or times when such Federal property was so acquired); and

(2) that such acquisition has placed a substantial and continuing financial burden on such agency; and

(3) that such agency is not being substantially compensated for the loss in revenue resulting from such acquisition by increases in revenue accruing to the agency from the carrying on of Federal activities with respect to the property so acquired,

then the local educational agency shall be entitled to receive for such fiscal year such amount as, in the judgment of the Secretary, is equal to the continuing Federal responsibility for the additional financial burden with respect to current expenditures placed on such agency by such acquisition of property. Such amount shall not exceed the amount which, in the judgment of the Secretary, such agency would have derived in such year, and would have had available for current expenditures, from the property acquired by the United States (such amount to be determined without regard to any improvements or other changes made in or on such property since such acquisition). In making the determination of the amount that would have been derived in such year, the Secretary shall apply the current levied real property tax rate for current expenditures levied by fiscally independent local educational agencies or imputed for fiscally dependent local educational agencies to the current annually determined aggregate assessed value of such acquired Federal property.

(b) For the purposes of this section any real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933, as amended, shall not be regarded as Federal property.

(c) Where the school district of any local educational agency shall have been formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at the time it files application under section 5) for any fiscal year to have (1) the eligibility of such local educational agency, and (2) the amount which such agency shall be entitled to receive, determined under this section only with respect to such of the former school districts comprising such consolidated school district as the agency shall designate in such election.

(d) Any payment made to a local educational agency for any fiscal year prior to 1987 that is attributable to an incorrect determination under subsection (a)(1)(C) shall be deemed to have been made in accordance with such subsection.

(e) The United States shall be deemed to own Federal property, for the purposes of this Act where—

(1) prior to the transfer of Federal property, the United States owned Federal property meeting the requirements of subparagraphs (A), (B), and (C) of subsection (a)(1); and

(2) the United States transfers a portion of the property referred to in paragraph (1) to another nontaxable entity, and the United States—

(A) restricts some or any construction on such property;

(B) requires that the property be used in perpetuity for the public purposes for which it was conveyed;

(C) requires the grantee of the property to report to the Federal Government (or its agent) setting forth information on the use of the property;

(D) prohibits the sale, lease assignment or other disposal of the property unless to another eligible government agency and with the approval of the Federal Government (or its agent); and

(E) reserves to the Federal Government a right of reversion at any time the Federal Government (or its agent) deems it necessary for the national defense.

(f) Beginning with fiscal year 1991, any school district which (1) as demonstrated by written evidence from the United States Forest Service satisfactory to the Secretary, contains between 50,000 and 55,000 acres of land that has been acquired by the United States Forest Service between 1915 and 1990, and (2) serves a county chartered by State law in 1875, shall be deemed to have met the requirements of subsection 2(a)(1)(C).

(20 U.S.C. 237) Enacted Sept. 30, 1950, ch. 1124, P.L. 874, 81st Cong., Title I, sec. 2, 64 Stat. 1101; amended Aug. 8, 1953, ch. 402, P.L. 248, 83d Cong., sec. 1, 67 Stat. 530; amended Aug. 12, 1955, ch. 868, P.L. 382, 84th Cong., sec. 1, 69 Stat. 713; amended Aug. 3, 1956, ch. 915, P.L. 949, 84th Cong., Title II, sec. 201, 70 Stat. 970; amended Aug. 12, 1958, P.L. 85–620, Title II, sec. 201, 72 Stat. 559; amended Oct 3, 1961, P.L. 87–344, Title I, sec. 102(a), 75 Stat. 759; amended Dec. 18; 1963, P.L. 88–210, Title III, sec. 302, formerly sec. 32, 77 Stat. 419; amended Oct. 16, 1964, P.L. 88–665, Title XI, sec. 1102(a), 78 Stat. 1109; amended April 11, 1965, P.L. 89–10, Title I, secs. 2, 5, 79 Stat. 27, 36; amended Jan. 2, 1968, P.L. 90–247, Title II, III, secs, 204(a)–(c) 301(e), 81 Stat. 808, 813; redesignated Oct. 16, 1968, P.L. 90–576, Title I, sec. 101(a)(1), 82 Stat. 1064; amended Apr. 13, 1970, P.L. 91–230, Title II, sec. 201(b), 84 Stat. 154; amended August 21, 1974, P.L. 93–380, sec. 303(a)(1), 88 Stat. 522; amended April 21, 1976, P.L. 94–273, sec. 3(5), 90 Stat. 376; amended Nov. 1, 1978, P.L. 95–561, sec. 1001(a), 92 Stat. 2306; amended Oct. 19, 1984, P.L. 98–511, sec. 301(a), 98 Stat. 2388; amended April 28, 1988, P.L. 100–297, secs. 2011(a)(1), 2013, 102 Stat. 294; amended May 11, 1989, P.L. 101–26, sec. 2(a), 103 Stat. 54; amended May 30, 1990, P.L. 101–305, sec. 7(a), 104 Stat. 259; amended Nov. 16, 1990, P.L. 101–589, sec. 722(a), 104 Stat. 2912.

CHILDREN RESIDING ON, OR WHOSE PARENTS ARE EMPLOYED ON, FEDERAL PROPERTY

CHILDREN OF PERSONS WHO RESIDE AND WORK ON FEDERAL PROPERTY

SEC. 3.[1] (a) For the purpose of computing the amount to which a local educational agency is entitled under this section for any fis-

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[1] Section 2018 of Public Law 100–297 provides the following:

SEC. 2018. TREATMENT OF CHILDREN RESIDING ON PROPERTY ASSISTED UNDER SECTION 8 OF THE UNITED STATES HOUSING ACT OF 1937.

(a) GENERAL RULE.—Notwithstanding any other provision of law, for fiscal years prior to fiscal year 1989, applicants may claim and receive payments under section 3 of Public Law 81–874 on behalf of children residing in or whose parents are employed on property assisted under sec-

Continued

cal year, the Secretary shall determine the number of children who were in average daily attendance at the schools of such agency, and for whom such agency provided free public education, during such fiscal year, and who, while in attendance at such schools, resided on Federal property and—

(1) did so with a parent employed on Federal property situated (A) in whole or in part in the county in which the school district of such agency is located, or (B) if not in such county, in whole or in part in the same State as the school district of such agency; or

(2) had a parent who was on active duty in the uniformed services (as defined in section 101 of title 37, United States Code).

In making a determination under clause (2) of the preceding sentence with respect to a local educational agency for any fiscal year, the Secretary shall include the number of children who were in average daily attendance at the schools of such agency, and for whom such agency provided free public education, during such year, and who, while in attendance at such schools, resided on Indian lands, as described in clause (A) of section 403(1).

CHILDREN OF PERSONS WHO RESIDE OR WORK ON FEDERAL PROPERTY

(b) For the purpose of computing the amount to which a local educational agency is entitled under this section for any fiscal year ending prior to October 1, 1993, the Secretary shall, in addition to any determination made with respect to such agency under subsection (a), determine the number of children (other than children with respect to whom a determination is made for such fiscal year under subsection (a) who were in average daily attendance at the schools of such agency, and for whom such agency provided free public education, during such fiscal year and who, while in attendance at such schools, either—

(1) resided on Federal property, or

(2) resided with a parent employed on Federal property situated (A) in whole or in part in the county in which the school district of such agency is located, or in whole or in part in the school district of such agency if the school district is located in more than one county, or (B) if not in such county or district, in whole or in part in the same State as the school district of such agency, or

(3) had a parent who was on active duty in the uniformed services (as defined in section 101 of title 37, United States Code).

For such purpose, with respect to a local educational agency, in the case of any fiscal year ending prior to October 1, 1993, the Secretary shall also determine the number of children (other than children to whom subsection (a) or the preceding sentence applies) who were in average daily attendance at the schools of such agency and

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tion 8 of the United States Housing Act of 1937, if such property was claimed by such applicants and such payments were received for the previous fiscal year.

(b) SPECIAL RULE.—Payments made to any local educational agency under section 3(b) of the Act for fiscal years prior to fiscal year 1989, on behalf of children who reside on or whose parents are employed on property that is housing assisted under section 8 of the United States Housing Act of 1937, shall stand, and such payments withheld or recovered shall be made or restored. (20 U.S.C. 238 note) for whom such agency provided free public education, during such fiscal year, and who, while in attendance at such schools resided with a parent who was, at any time during the three-year period immediately preceding the beginning of the fiscal year for which the determination is made, a refugee who meets the requirements of clauses (A) and (B) of section 2(b)(3) of the Migration and Refugee Assistance Act of 1962, [1] except that the Secretary shall not include in his determination under this sentence of any fiscal year any child with respect to whose education a payment was made under section 2(b)(4) of such Act. [1]

ELIGIBILITY FOR PAYMENTS

(c)(1) Except as is provided in paragraph (2), no local educational agency shall be entitled to receive a payment for any fiscal year with respect to a number of children determined under subsection (a) and subsection (b), unless the number of children so determined with respect to such agency amounts to—

(A) at least four hundred such children; or

(B) a number of such children which equals at least 3 per centum of the total number of children who were in average daily attendance, during such year, at the schools of such agency and for whom such agency provided free public education;

whichever is the lesser.

(2)(A)(i) If a local educational agency is eligible for a payment for any fiscal year by the operation of clause (B) of paragraph (1), it shall continue to be so eligible for the two succeeding fiscal years even if such agency fails to meet the requirement of such clause (B) during such succeeding fiscal years, except that the number of children determined for the second such succeeding fiscal year with respect to such agency for the purpose of any clause in paragraph (1) of subsection (d) shall not exceed 50 per centum of the number of children determined with respect to such agency for the purpose of that clause for the last fiscal year during which such agency was so eligible.

(ii) If the Secretary determines with respect to any local educational agency for any fiscal year that—

(I) such agency does not meet the requirement of clause (B) of paragraph (1); and

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[1] Subsection (b) of the Migration and Refugee Assistance Act of 1962, before enactment of the Refugee Act of 1980 (Public Law 96–212), provided (in relevant part) as follows:

(b) There are hereby authorized to be appropriated such amounts as may be necessary from time to time—

* * * * * * *

(3) for assistance to or in behalf of refugees in the United States whenever the President shall determine that such assistance would be in the interest of the United States: *Provided*, That the term "refugee" as herein used means aliens who (A) because of persecution or fear of persecution on account of race, religion, or political opinion, fled from a nation or area of the Western Hemisphere; (B) cannot return thereto because of fear of persecution on account of race, religion, or political opinion; and (C) are in urgent need of assistance for the essentials of life;

(4) for assistance to State or local public agencies providing services for substantial numbers of individuals who meet the requirements of subparagraph (3) (other than clause (C) thereof) for (A) health services and educational services to such individuals, and (b) special training for employment and services related thereto:

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(II) the application of such requirement, because of exceptional circumstances, would defeat the purposes of this title;

the Secretary is authorized to waive such requirement with respect to such agency.

(B) No local educational agency shall be entitled to receive a payment for any fiscal year with respect to a number of children determined under the second sentence of subsection (b) unless the number of children so determined constitutes at least 20 per centum of the total number of children who were in average daily attendance at the schools of such agency and for whom such agency, during such fiscal year, provided free public education.

AMOUNT OF PAYMENTS

(d)(1) Except as is provided in paragraph (2), the amount to which a local educational agency shall be entitled under this section for any fiscal year shall be—

(A) in the case of any local educational agency with respect to which the number of children is determined under subsection (a) an amount equal to 100 per centum of the local contribution rate multiplied by the number of children determined under such subsection plus the product obtained with respect to such agency under subparagraph (B); and

(B) in any other case, an amount equal to 25 per centum of the local contribution rate multiplied by the number of children determined with respect to such agency for such fiscal year under subsection (b).

(2)(A)(i) Except as provided in clause (ii), for any fiscal year after September 30, 1988, funds reserved to make payments under subparagraph (B) shall not exceed $25,000,000 from the funds appropriated for such fiscal year.

(ii) In the event that the payments made under subparagraph (B) in any fiscal year are less than $25,000,000, such remaining funds as do not exceed $25,000,000 shall remain available until expended for the purpose of carrying out the provisions of subparagraph (B). Such remaining funds shall not be considered part of the funds reserved to make payments under subparagraph (B), but shall be expended if funds in excess of $25,000,000 are needed to carry out the provisions of subparagraph (B) in any fiscal year.

(iii) If for any fiscal year the total amount of payments to be made under subparagraph (B) exceeds $25,000,000 and the funds described in clause (ii) are insufficient to make such payments, then the provisions of clause (i) shall not apply.

(B) If the Secretary determines that

(i) the amount of payment resulting from paragraph (1), as is otherwise provided in this subsection with respect to any local educational agency for any fiscal year, together with the funds available to such agency from State and local sources and from other sections of this title, determined in accordance with subparagraph (E), is less than the amount necessary to enable such agency to provide a level of education equivalent to the State average during the preceding fiscal year or to the average of that maintained during the preceding fiscal year in three or more of the school districts of the State which are generally comparable to the school district of such agency, whichever is higher, increased or decreased, as the case may be, in the same percentage as the cost of such level of education increased or decreased from the second preceding fiscal year to the prior fiscal year;

(ii) such agency is making a reasonable tax effort and exercising due diligence in availing itself of State and other financial assistance;

(iii) not less than 50 per centum of the total number of children who were in average daily attendance at the schools of such agency during such fiscal year and for whom such agency provided free public education were, during such fiscal year, determined under either subsection (a) or subsection (b), or both; and

(iv) the eligibility of such agency under State law for State aid with respect to free public education of children residing on Federal property, and the amount of such aid, are determined on a basis no less favorable to such agency than the basis used in determining the eligibility of local educational agencies for State aid, and the amount thereof, with respect to the free public education of other children in the State;

the Secretary shall increase the actual payment made pursuant to the amount computed under paragraph (1) with respect to such agency for such fiscal year to the extent necessary to enable such agency to provide a level of education equivalent to that maintained in such comparable school districts. The increase computed under this subparagraph shall be sufficient to allow the school district of the local educational agency to provide a level of education (calculated in accordance with this subparagraph) equal to the average of the three comparable districts in the State or the State average, whichever is greater, as described in clause (i). For the purpose of clause (ii), the Secretary shall determine that a reasonable tax effort has been made if the tax rate of the agency in the year for which the determination is made is an amount that is at least equal to 80 percent of the average tax rate for general fund purposes of comparable school districts for such fiscal year. Coterminous military districts shall be deemed to meet the requirement of such reasonable tax effort. Except for coterminous military districts, payments made to any agency under this subparagraph in any fiscal year shall be reduced by the percentage that the average tax rate for operational purposes of the comparable school districts or, if none, the State average tax rate, exceeds the tax rate of such agency. Subject to the provisions of subsection (h) of this section, the Secretary shall not, under, the preceding sentence, increase the amount computed under paragraph (1) with respect to any local educational agency for any fiscal year to an amount which exceeds the product of—

(I) the amount the Secretary determines to be the cost per pupil of providing a level of education maintained in such comparable school districts during such fiscal year,

multiplied by—

(II) the number of children determined with respect to such agency for such year under either subsection (a) or subsection (b), or both, minus the amount of State aid which the Secretary determines to be available with respect to such children for the fiscal year for which the computation is being made. In carrying out the provisions of this subparagraph, the Secretary shall not prorate the amounts computed under this subparagraph attributable to the number of children determined under subsection (a) or (b), or both. In carrying out the provisions of this subparagraph, the Secretary shall count the actual number of children with respect to such agency for each fiscal year under subsection (b) without regard to the provisions of subparagraph (E) of this paragraph.

(C)(i) The amount of the entitlement of any local educational agency under this section for any fiscal year with respect to children with disabilities and children with specific learning disabilities for whom a determination is made under subsection (a)(2) or (b)(3) and for whom such local educational agency is providing a program designed to meet the special educational and related needs of such children shall be the amount determined under paragraph (1) with respect to such children for such fiscal year multiplied by 150 per centum.

(ii) For the purposes of division (i), programs designed to meet the special educational and related needs of such children shall be consistent with criteria established under division (iii).

(iii) The Secretary shall by regulation establish criteria for assuring that programs (including preschool programs) provided by local educational agencies for children with respect to whom this subparagraph applies are of sufficient size, scope, and quality (taking into consideration the special educational needs of such children) as to give reasonable promise of substantial progress toward meeting those needs, and in the implementation of such regulations the Secretary shall consult with persons in charge of special education programs for children with disabilities in the educational agency of the State in which such local educational agency is located.

(iv) For the purpose of this subparagraph the term "children with disabilities" has the same meaning as specified in section 602(1)[1] of the Education of the Handicapped Act[2] and the term "children with specific learning disabilities" has the same meaning as specified in section 602(15)[3] of such Act.

(D) The amount of the entitlements of any local educational agency under this section for any fiscal year with respect to children who, while in attendance at such agency, resided on Indian lands, as described in clause (A) of section 403(1), shall be the amount determined under paragraph (1) with respect to such children for such fiscal year multiplied by 125 per centum. Funds received under this section may be used to pay tuition for any student not eligible for funding under section 1128 of Public Law 95–561 in any school receiving funding under such section. No condition involving program or personnel shall apply to any such payments.

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[1] So in original. Probably should strike "602(1)" and insert "602(a)(1)".

[2] Section 901 of Public Law 101–476 changed the short title of title VI of Public Law 91–230 from the "Education of the Handicapped Act" to the "Individuals with Disabilities Education Act". Such section further provided that any reference to the former shall be considered to be a reference to the "Individuals with Disabilities Education Act".

[3] So in original. Probably should strike "602(15)" and insert "602(a)(15)".

(E) For the purpose of subparagraph (B)(i) of this paragraph—

(i) available funds may not include any cash balance at the end of a year allowed under State law; or

(ii) whenever no State law governing cash balance exists, available funds may not include 30 percent of the local educational agency's operating costs.

(3)(A) Except as is provided in subparagraph (B), in order to compute the local contribution rate for a local educational agency for any fiscal year, the Secretary, after consulting with the State educational agency of the State in which the local educational agency is located and with the local educational agency, shall determine which school districts within such State are generally comparable to the school district of the local educational agency for which the computation is being made. The local contribution rate for such agency shall be the quotient of—

(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made, which the local educational agencies of such comparable school districts derived from local sources,

divided by—

(ii) the aggregate number of children in average daily attendance for whom such agency provided free public education during such second preceding fiscal year.

(B)(i) The local contribution rate for a local educational agency in any State shall not be less than—

(I) 50 per centum of the average per pupil expenditure in such State, or

(II) 50 per centum of such expenditures in all the States,

whichever is greater, except that clause (II) shall not operate in such a manner as to make the local contribution rate for any local educational agency in any State exceed an amount equal to the average per pupil expenditure in such State.

(ii) If the current expenditures in those school districts which the Secretary has determined to be generally comparable to the school district of the local educational agency for which a computation is made under subparagraph (A) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in the school district of such agency, a level of education equivalent to that maintained in such other school districts, the Secretary shall increase the local contribution rate for such agency by such an amount which he determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors. The amount of any such supplementary payment may not exceed the per pupil share (computed with regard to all children in average daily attendance), as determined by the Secretary, of the increased current expenditures necessitated by such unusual geographical factors.

(iii) The local contribution rate for any local educational agency in—

(I) Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, or

(II) any State in which a substantial proportion of the land is in unorganized territory, or

(III) any State in which there is only one local education agency.

shall be determined for any fiscal year by the Secretary in accordance with policies and principles which will best achieve the purposes of this section and which are consistent with the policies and principles provided in this paragraph for determining local contribution rates in States where it is possible to determine generally comparable school districts.

(C) The local contribution rate for a local educational agency shall include current expenditures from that portion of a real property tax required to be levied, collected, and distributed to local educational agencies by county governments pursuant to State law where the remainder of such real property tax is transferred to the State.

(D) For the purposes of this paragraph—

(i) the term "State" does not include Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands; and

(ii) the "average per pupil expenditure" in a State shall be (I) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made of all local educational agencies in the State, divided by (II) the aggregate number of children in average daily attendance for whom such agencies provide free public education during such second preceding fiscal year.

ADJUSTMENTS FOR DECREASES IN FEDERAL ACTIVITIES

(e)(1) Whenever the Secretary of Education determines that—

(A) for any fiscal year, the number of children determined with respect to any local educational agency under subsections (a) and (b) is less than 90 percent of the number so determined with respect to such agency during the preceding fiscal year;

(B) there has been a decrease or cessation of Federal activities within the State in which such agency is located; and

(C) such decrease or cessation has resulted in a substantial decrease in the number of children determined under subsections (a) and (b) with respect to such agency for such fiscal year;

the amount to which such agency is entitled for such fiscal year and for any of the 3 succeeding fiscal years shall not be less than 90 percent of the payment such agency received under this subsection and subsections (a) and (b) for the preceding fiscal year.

(2) There is authorized to be appropriated for each fiscal year such amount as may be necessary to carry out the provisions of this subsection, which remain available until expended.

(3) Expenditures pursuant to paragraph (2) shall be reported by the Secretary to the Committees on Appropriations and Education and Labor of the House of Representatives and the Committees on Appropriations and Labor and Human Resources of the Senate within 30 days of expenditure.

(4) The Secretary shall make available to the Congress in the Department of Education's annual budget submission, the amount

of funds necessary to defray the costs associated with the provisions of this subsection during the fiscal year for which the submission is made.

DETERMINATIONS ON THE BASIS OF ESTIMATES

(f) Determinations with respect to a number of children by the Secretary under this section for any fiscal year shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate, because of an under-estimate, to deprive any local educational agency of its entitlement to any payment (or the amount thereof) under this section to which such agency would be entitled had such determination been made on the basis of accurate data.

(g) Notwithstanding any other provisions of this Act, no State may require that a vote of the qualified electors of a heavily impacted school district of a local educational agency be held to determine if such school district will spend the amounts to which the local educational agency is entitled under this Act.

SPECIAL PROVISIONS

(h)(1) Any local educational agency for which the boundaries of the school district of such agency are coterminous with the boundaries of a military installation and which is not eligible to receive payments under subsection (d)(2)(B) shall receive 100 percent of the amounts to which such agency is entitled under subsection (a) of this section.

(2) For the fiscal year beginning October 1, 1987, and for each year thereafter, the local contribution rate for coterminous local educational agencies under paragraph (1) shall be not less than 70 per centum of the average per pupil expenditure in all States during the second preceding year prior to the fiscal year for which the determination is made unless such payment would raise the per pupil expenditure above the average for that State. Whenever the preceding sentence applies, the local contribution rate may not be less than the amount necessary to raise the per pupil expenditure for that district to the average per pupil expenditure for the State in which such agency is located. The first 2 sentences of this paragraph shall not apply for local educational agencies in any State in which the State equalization law would prohibit the local educational agency from retaining such additional funds or in which State law would require that the State contribution would be reduced in proportion to such additional funds. The local contribution rate for local educational agencies under this paragraph may not be less than 50 per centum of the average per pupil expenditure

in all States during the second preceding fiscal year prior to the fiscal year for which the determination is made.

(20 U.S.C. 238) Enacted Sept. 30, 1950, ch. 1124, P.L. 874, 81st, Cong., Title I, sec. 3, 64 Stat. 1102; amended Aug. 8, 1953, ch. 402, P.L. 248, 83d Cong., sec. 2, 67 Stat. 530; amended Aug. 12, 1955, ch. 868, P.L. 382, 84th Cong., sec. 1, 69 Stat. 713; amended Aug. 1, 1956, ch. 852, P.L. 896, 84th Cong., sec. 10, 70 Stat. 909; amended Aug. 3, 1956, ch. 915, P.L. 949, 84th Cong., Title II, secs. 202–206, 70 Stat. 970, 971; amended Aug. 12, 1958, P.L. 85–620, Title II, sec., 202, 72 Stat. 559; amended June 25, 1959, P.L. 86–70 sec. 18(d)(1)–(3), 73 Stat. 144; amended July 12, 1960, P.L. 86–624, sec. 14(d)(1)–(3), 74 Stat. 414; amended Oct. 3, 1961, P.L. 87–344, Title I, sec. 102(a), 75 Stat. 759; amended Dec. 18, 1963, P.L. 88–210, Title III, sec. 302, formerly sec. 32, 77 Stat. 419; amended Oct. 16, 1964, P.L. 88–665, Title XI, sec. 1102(a), 78 Stat. 1109; amended April 11, 1965, P.L. 89–10, Title I, secs. 2, 3(a), 4(d)(2), 5, 79 Stat. 27, 34–36; amended Nov. 1, 1965, P.L. 89–313, sec. 4(a), 79 Stat. 1161; amended Nov. 3, 1966, P.L. 89–750, Title II, sec. 201, 80 Stat. 1210; amended Jan. 2, 1968, P.L. 90–247, Titles II, III, secs. 204(d), 205(a), 206, 301(e), 81 Stat. 808, 809, 813; redesignated Oct. 16, 1968, P.L. 90–576, Title I, sec. 101(a)(1), 82 Stat. 1064, amended April 13, 1970, P.L. 91–230, Title II, secs. 201(b), 202, 84 Stat. 154, 155; amended August 21, 1974, P.L. 93–380, sec. 304, 88 Stat. 522; rewritten August 21, 1974, P.L. 93–380, sec. 305(a)(1), 88 Stat. 523, 529; amended April 21, 1976, P.L. 94–273, sec. 3(5), 90 Stat. 376; amended Nov. 1, 1978, P.L. 95–561, Title X, 92 Stat. 2306, 2307, 2312, 2313; amended August 13, 1981, P.L. 97–35, sec. 505(a)(2), 95 Stat. 442. The amendments made by sec. 1003 of P.L. 95–561 are effective with respect to fiscal year 1980 and subsequent fiscal years. Section 3 further amended September 24, 1983, P.L. 98–94, sec. 1255(b), 97 Stat. 701; amended Oct. 19, 1984, P.L. 98–511, secs. 301(a) and 303(a), 98 Stat. 2388; amended July 2, 1986, P.L. 99–349, sec. 2, 100 Stat. 739; amended April 28, 1988, P.L. 100–297, secs. 2011, 2012(a), 2014, 2019, 102 Stat. 294-296, 300; amended May 30, 1990, P.L.101–305, sec. 3(a)(1) and (b), 104 Stat. 255–256; amended Oct. 30, 1990, sec. 901(f)(1), 104 Stat. 1151; amended Aug. 17, 1991, P.L. 102–103, sec. 401, 105 Stat. 508.

SUDDEN AND SUBSTANTIAL INCREASES IN ATTENDANCE INCREASES HEREAFTER OCCURRING

SEC. 4. (a) If the Secretary determines for any fiscal year ending prior to October 1, 1993—

(1) that, as a direct result of activities of the United States (carried on either directly or through a contractor), an increase in the number of children in average daily attendance at the schools of any local educational agency has occurred in such fiscal year, which increase so resulting from activities of the United States is equal to at least 5 per centum of the difference between the number of children in average daily attendance at the schools of such agency during the preceding fiscal year and the number of such children whose attendance during such year resulted from activities of the United States (including children who resided on Federal property or with a parent employed on Federal property);

(2) that such activities of the United States have placed on such agency a substantial and continuing financial burden; and

(3) that such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance but is unable to secure sufficient funds to meet the increased educational costs involved,

then such agency shall be entitled to receive for such fiscal year an amount equal to the product of—

(A) the number of children which the Secretary determines to be the increase, so resulting from activities of the United States, in such year in average daily attendance; and

(B) the amount which the Secretary determines to be the current expenditures per child necessary to provide free public education to such additional children during such year, minus the amount which the Secretary determines to be available from State, local, and Federal sources for such purpose (not counting as available for such purpose either payments under this Act or funds from local sources necessary to provide free public education to other children).

For the next fiscal year (except where the determination under the preceding sentence has been made with respect to the fiscal year ending June 30, 1968) such agency shall be entitled to receive 50 per centum of such product reduced by the amount of such product which is attributable to children with respect to whom such agency is, or upon application would be, entitled to receive any payment under section 3 for such fiscal year, but not to exceed for such year the amount which the Secretary determines to be necessary to enable such agency, with the State, local, and other Federal funds (exclusive of funds available under title II) available to it for such purpose, to provide a level of education equivalent to that maintained in the school districts in such State which in his judgment are generally comparable to the school district of such agency. The determinations whether an increase has occurred for purposes of clause (1) hereof and whether such increase meets the 5 per centum requirement contained in such clause, for any fiscal year, shall be made on the basis of estimates by the Secretary made prior to the close of such year, except that an underestimate made by the Secretary pursuant to the foregoing provisions of this sentence shall not operate to deprive an agency of its entitlements to any payments under this section to which it would be entitled had the estimate been accurate. The determination under clause (B) shall be made by the Secretary after considering the current expenditures per child in providing free public education in those school districts in the State which, in the judgment of the Secretary, are generally comparable to the school district of the local educational agency for which the computation is being made.

INCREASES HERETOFORE OCCURRING

(b) (Subsection 4(b) has been executed.)

COUNTING OF CERTAIN CHILDREN

(c) In determining under subsection (a) whether there has been an increase in attendance in any fiscal year directly resulting from activities of the United States and the number of children with respect to whom payment is to be made for any fiscal year, the Secretary shall not count—

(A) children with respect to whom a local educational agency is, or upon application would be, entitled to receive any payment under section 3 for such fiscal year: Provided, That the Secretary shall count for such purposes as an increase directly resulting from activities of the United States, an increase in the number of children who reside on Federal property or reside with a parent employed on Federal property, if the local educational agency files, in accordance with regulations of the Secretary, its election that such increase be counted for such purposes instead of for the purposes of section 3; and

(B) children whose attendance is attributable to activities of the United States carried on in connection with real property which has been excluded from the definition of Federal property by the last sentence of paragraph (1) of section 403.

ADJUSTMENT FOR CERTAIN DECREASES IN FEDERAL ACTIVITIES

(d) Whenever the Secretary determines that—

(1) a local educational agency has made preparations to provide during a fiscal year free public education for a certain number of children to whom subsection (a) applies;

(2) such preparations were in his judgment reasonable in the light of the information available to such agency at the time such preparations were made; and

(3) such number has been substantially reduced by reason of a decrease in or cessation of Federal activities or by reason of a failure of any of such activities to occur,

the amount to which such agency is otherwise entitled under this section for such year shall be increased to the amount to which, in the judgment of the Secretary, such agency would have been entitled but for such decrease in or cessation of Federal activities or the failure of such activities to occur, minus any reduction in current expenditures for such year which the Secretary determines that such agency has effected, or reasonably should have effected, by reason of such decrease in or cessation of Federal activities or the failure of such activities to occur.

CONSULTATION WITH STATE AND LOCAL AUTHORITIES

(e) All determinations of the Secretary under this section shall be made only after consultation with the State educational agency and the local educational agency.

(20 U.S.C. 239) Enacted Sept. 30, 1950, ch. 1124, P.L. 874, 81st Cong., Title I, sec. 4, 64 Stat. 1104; amended Aug. 8, 1953, ch. 402, P.L. 248, 83d Cong., secs. 3–5, 67 Stat. 552; amended Aug. 12, 1955, ch. 868, P.L. 382, 84th Cong., secs. 1, 2, 69 Stat. 713; amended Aug. 3, 1956, ch. 915, P.L. 896, 84th Cong., Title II, secs, 207, 208, 70 Stat. 972; amended Aug. 12, 1958, P.L. 85–620, Title II, sec. 203, 72 Stat. 560; amended Oct. 3, 1961, P.L. 87–344, Title I, sec. 102(a), 75 Stat. 759; amended Dec. 18, 1963, P.L. 88–210, Title III, sec. 302, formerly sec. 32, 77 Stat. 419; amended Oct. 16, 1964, P.L. 88–665, Title XI, sec. 102(a), 78 Stat. 1109; amended April 11, 1965, P.L. 89–10, Title I, secs. 3(b), 5, 79 Stat. 34, 36; amended Jan. 2, 1968, P.L. 90–247, Title III, sec. 301(e), 81 Stat. 813, redesignated Oct. 16, 1968, P.L. 90–576, Title I, sec. 101(a)(1), 82 Stat. 1064, amended April 13, 1970, P.L. 91–230, Title II, sec. 201(b), 84 Stat. 154; amended August 21, 1974, P.L. 93–380, sec. 303(a)(2), 88 Stat. 522; amended April 21, 1976, P.L. 94–273, sec. 3(5), 90 Stat. 376; amended Nov. 1, 1978; P.L. 95–561, Title X, 92 Stat. 2306; amended Oct. 19, 1984, P.L. 98–511, sec. 301(a), 98 Stat. 2388; amended April 28, 1988, P.L. 100–297, secs. 2011, 2012, 102 Stat. 294.

SPECIAL PROGRAM

SEC. 4A. [Repealed August 3, 1981, P.L. 97–35, sec. 542 (1), 95 Stat. 458.]

METHOD OF MAKING PAYMENTS[1]

APPLICATION

SEC. 5. (a) APPLICATIONS.—(1) Any local educational agency desiring to receive the payments to which it is entitled for any fiscal year under section 2, 3, or 4 shall submit an application therefor to the Secretary and file a copy with the State educational agency. Each such application shall be submitted in such form, and containing such information, as the Secretary may reasonably require to determine whether such agency is entitled to a payment under any of such sections and the amount of any such payment.

(2) The Secretary shall establish a deadline for the receipt of applications. For each fiscal year beginning with fiscal year 1991, the Secretary shall accept an approvable application received up to 60 days after the deadline, but shall reduce the payment based on such late application by 10 percent of the amount that would otherwise be paid. The Secretary shall not accept or approve any application submitted more than 60 days after the application deadline.

(3) Notwithstanding any other provision of law or regulation, a State educational agency that had been accepted as an applicant for funds under section 3 for fiscal years 1985, 1986, 1987 and 1988 shall be permitted to continue as an applicant under the same conditions by which it made application during such fiscal years only if such State educational agency distributes all funds received for the students for which application is being made by such State educational agency to the local educational agencies providing educational services to such students.

PAYMENTS BY THE COMMISSIONER

(b)(1)(1)[2] The Secretary shall pay to each local educational agency rounded to the nearest whole dollar,,[3] making application pursuant to subsection (a), the amount to which it is entitled under sections 2, 3, or 4. Sums appropriated, for any fiscal year, to enable the Secretary to make payments pursuant to this title shall, notwithstanding any other provision of law unless enacted in express limitation of this subsection, remain available for obligation and payments with respect to amounts due local educational agencies under this title for such fiscal year, until the end of the fiscal year succeeding the fiscal year for which such sums are appropriated. The Secretary shall return to the United States Treasury any funds appropriated for payments under this title for fiscal years 1988 and thereafter that, as the result of overpayments or unallowable expenditures, are recovered by the Department of Education after the end of the fifth fiscal year following the end of the fiscal year for which the sums were appropriated, or that remain in Department of Education accounts after that time.

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[1] For the purposes of section 5 of the Act of September 23, 1950, the number of children in the membership of a local educational agency residing in a low-rent housing project assisted under the United States Housing Act of 1937 during the years of the base period preceding the effective date provided in paragraph (1) shall be determined by the Commissioner on the basis of estimates. Paragraph (1) provides that the effective date for amendments made by P.L. 91–231, sec. 203(a)(6) is after June 30, 1970.

[2] So in original. Section 2015(b)(1) of P.L. 100–297 inserted a "(1)" after the subsection designation. Probably should strike "(b)(1)(1)" and insert "(b)(1)".

[3] Extra comma added by § 2015(a) of P.L. 100–297, 102 Stat. 296.

(2)[1] As soon as possible after the beginning of any fiscal year, the Secretary shall, on the basis of a written request for a preliminary payment from any local education agency that was eligible for a payment for the preceding fiscal year on the basis of entitlements established under section 2 or 3, make such a preliminary payment—

(A) to any agency for whom the number of children determined under section 3(a) amounts to at least 20 per centum of such agency's total average daily attendance, of 75 per centum of the amount that such agency received for such preceding fiscal year on the basis of such entitlements; and

(B) to any other agency, of 50 per centum of the amount that such agency received for such preceding fiscal year on the basis of such entitlements.

(3)(A) Payments of entitlements under section 3(d)(2)(D) of this Act shall be made only to local educational agencies which have, within one year of the date of enactment of this paragraph, or when local educational agencies are formed after such date of enactment, within one year of their formation, established such policies and procedures with respect to information received from Indian parents and tribes as required by this paragraph and which have made assurances to the Secretary, at such time and in such manner as shall be determined by regulation, that such policies and procedures have been established. The Secretary shall have the authority to waive this one-year limit for good cause, and in writing to the tribes to be affected.

(B) Each local educational agency shall establish such policies and procedures as are necessary to insure that—

(i) Indian children claimed under section 3(a) participate on an equal basis in the school program with all other children educated by the local educational agency;

(ii) applications, evaluations, and program plans are adequately disseminated to the tribes and parents of Indian children claimed under section 3(a); and

(iii) tribes and parents of Indian children claimed under section 3(a) are—

(I) afforded an opportunity to present their views with respect to the application, including the opportunity to make recommendations concerning the needs of their children and the ways by which they can assist their children in realizing the benefits to be derived from the educational programs assisted under this paragraph;

(II) actively consulted and involved in the planning and development of programs assisted under this paragraph; and

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[1] The last proviso under the heading "IMPACT AID" in title III of Public Law 101–517 states the following: *Provided further*, That any school district that received a payment under section 5(b)(2) of the Act for fiscal year 1986, but which the Department of Education has determined to be ineligible for section 2 assistance due to a review of the original assessed value of the real property involved at the time of acquisition of the Federal property, shall be deemed eligible for payments under section 2 for fiscal year 1991 only.

(III) afforded a general opportunity to present their overall views on the educational program, including the operation of such programs, and the degree of parental participation allowed.

(C)(i) Any tribe, or its designee, which has students in attendance at a local educational agency may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Secretary regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of subparagraph (B) of this paragraph.

(ii) Within ten working days from receipt of the complaint, the Secretary shall—

(I) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or, if the Secretary determines there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;

(II) designate a hearing examiner to conduct the hearing; and

(III) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.

(iii) The hearing shall be held within thirty days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.

(iv) The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceeding.

(v) Within thirty days of the completion of the hearing, the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial actions (if any) which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Secretary.

(vi)[1] Within thirty days of his receipt of the findings, recommendations, and record, the Secretary shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for his decision.

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[1] Subsection (d) of section 1101 of P.L. 95–561, enacted Nov. 1, 1978, states (at 92 Stat. 2315):
"(d) Within one year of the date of of enactment of this Act, the Secretary, in cooperation with the Commissioner, shall propose and promulgate special regulations which will provide that where a local educational agency does not undertake the remedial action required by the Commissioner under section 5(b)(3)(C)(vi) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) and the Commissioner determines that an extension of time will not effectively encourage the remedy, the affected tribes may elect to contract with the Bureau under title I of the Indian Self-Determination and Education Assistance Act to provide educational services provided by the local educational agency or elect to have such services provided by a Bureau of Indian Affairs school. Such regulations shall also establish procedures whereby the funding necessary to provide such educational services may be obtained, and establish such procedures as are necessary to insure orderly and expeditious transition in provision of educational services."

(vii) Upon completion of his final determination, the Secretary shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Secretary's final determination. The final determination of the Secretary shall be subject to judicial review.

(viii) In all actions under this subparagraph, the Secretary shall have discretion to consolidate complaints involving the same tribe or local educational agency.

(D) If the local educational agency rejects the determination of the Secretary, or if the remedy required is not undertaken within the time established and the Secretary determines that an extension of the time established will not effectively encourage the remedy required, the Secretary shall withhold payment of all moneys to which such local agency is entitled under section 3(d)(2)(D) until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency: Provided, That the Secretary may not withhold such moneys during the course of the school year if he determines that it would substantially disrupt the educational programs of the local educational agency.

(E) If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978, to have education services provided either directly by the Bureau of Indian Affairs or by contract with that Agency, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which led to the tribal action (under such subsection (d)) was lodged may be counted with respect to that local educational agency for the purpose of receiving funds under section 3(d)(2)(D) of this Act. In such event, funds under such section shall not be withheld pursuant to subparagraph (D) and no further complaints with respect to such students may be filed under subparagraph (C)(i).

(F) This paragraph is based upon the special relationship between the Indian nations and the United States and nothing in it shall be deemed to relieve any State of any duty with respect to any citizens of that State.

ADJUSTMENTS WHERE NECESSITATED BY APPROPRIATIONS

(c) If the sums appropriated for any fiscal year for making payments on the basis of entitlements established under sections 2, 3, and 4 for that year are not sufficient to pay in full the total amounts which the Secretary estimates all local educational agencies are entitled to receive under such sections for such year, the Secretary shall allocate such sums among local educational agencies and make payments to such agencies as follows:

(1)(A) The Secretary shall first allocate to each local educational agency which is entitled to a payment under section 2 an amount equal to 100 per centum of the amount to which it is entitled as computed under that section for such fiscal year and to each local educational agency an amount equal to the supplemental 50 per centum of the entitlement that each child described in section 3(d)(2)(C) served by such agency is eligible to receive under section 3(d)(2)(C).

(B) The Secretary shall then allocate to any local educational agency which is eligible under section 3(d)(2)(B) an amount equal to 100 per centum of the amount to which such agency is entitled under sections 3(a) and 3(b).

(C) The Secretary shall reserve from the remainder of the sums appropriated for this Act (other than amounts needed for section 7) for such fiscal year—

(i) 80 per centum for the purpose of allocating sums under paragraph (2) for entitlements determined under section 3(a); and

(ii) 20 per centum for the purpose of allocating sums under paragraph (3) for entitlements determined under section 3(b).

(2)(A) for the purpose of allocating sums available for section 3(a) for any fiscal year which remain after the allocation required by paragraph (1) and any allocation required by sections 5(e) and 3(h) for such fiscal year, the Secretary shall determine the category to which a local educational agency belongs as follows:

(i) Each local educational agency in which the number of children determined under section 3(a) amounts to at least 20 per centum of the total number of children who were in average daily attendance in the schools of such agency is in category (i).

(ii) Each local educational agency in which the number of children determined under section 3(a) amounts to at least 15 per centum, but less than 20 per centum of the total number of children who were in average daily attendance in the schools of such agency is in category (ii).

(iii) Each local educational agency in which the number of children determined under section 3(a) amounts to less than 15 per centum of the total number of children who were in average daily attendance in the schools of such agency is in category (iii).

(B) The Secretary shall allocate the amounts described in subparagraph (A) according to the following schedule:

(i) A first allocation shall be made as follows:

(I) 80 per centum of entitlement to local educational agencies described in category (i);

(II) 60 per centum of entitlement to local educational agencies described in category (ii); and

(III) 40 per centum of entitlement to local educational agencies described in category (iii).

(ii) Any sums remaining after the allocation pursuant to clause (i) shall be allocated as follows:

(I) 20 per centum of entitlement to local educational agencies described in category (i);

(II) 15 per centum of entitlement to local educational agencies described in category (ii); and

(III) 10 per centum of entitlement to local educational agencies described in category (iii).

(iii) Any sums remaining after the allocation pursuant to clause (ii) shall be allocated as follows:

(I) 25 per centum of entitlement to local educational agencies described in category (ii); and

(II) 50 per centum of entitlement to local educational agencies described in category (iii).

(C) For the purpose of determining the category under subparagraph (A) that is applicable to the local educational agency providing free public education to secondary school students residing on Hanscom Air Force Base, Massachusetts, the Secretary shall count children in kindergarten through grade 8 who are residing on such base as if such students are receiving a free public education from such local educational agency.

(3)(A) For the purpose of allocating sums available for section 3(b) for any fiscal year which remain after the allocation required by paragraph (1) and any allocation required by sections 5(e) and 3(h) for such fiscal year, the Secretary shall determine the category to which a local educational agency belongs as follows:

(i) Each local educational agency in which the number of children determined under section 3(b) amounts to at least 20 per centum of the total number of children who were in average daily attendance in the schools of such agency is in category (i).

(ii) Each local educational agency in which the number of children determined under section 3(b) amounts to less than 20 per centum of the total number of children who were in average daily attendance in the schools of such agency is in category (ii).

(B) The Secretary shall allocate the amounts described in subparagraph (A) according to the following schedule:

(i) A first allocation shall be made as follows:

(I) 20 per centum of entitlement to local educational agencies described in category (i); and

(II) 10 per centum of entitlement to local educational agencies described in category (ii).

(ii) Any sums remaining after the allocation pursuant to clause (i) shall be allocated as follows:

(I) 30 per centum of entitlement to local educational agencies described in category (i); and

(II) 5 per centum of entitlement to local educational agencies described in category (ii).

(iii) Any sums remaining after the allocation pursuant to clause (ii) shall be allocated as follows:

(I) 50 per centum of entitlement to local educational agencies described in category (i); and

(II) 85 per centum of entitlement to local educational agencies described in category (ii).

(4) Whenever the additional amounts described in paragraphs (2)(A) and (3)(A) in each fiscal year are insufficient to provide the required percent of entitlement to each local educational agency under paragraph (2)(B) or paragraph (3)(B), respectively, the full amounts that local educational agencies are entitled to receive under such paragraphs shall be ratably re-

duced. If additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

No allocation may be made pursuant to paragraph (2) and no payment may be paid on the basis of any such allocation unless allocations are made pursuant to paragraph (1) and payments are made on the basis of such allocations.

TREATMENT OF PAYMENTS BY THE STATES IN DETERMINING ELIGIBILITY FOR, AND THE AMOUNT OF, STATE AID

(d)(1) Except as provided in paragraph (2), no payments may be made under this title for any fiscal year to any local educational agency in any State (A) if that State has taken into consideration payments under this title in determining—

(i) the eligibility of any local educational agency in that State for State aid for free public education of children; or

(ii) the amount of such aid with respect to any such agency;

during that fiscal year or the preceding fiscal year, or (B) if such State makes such aid available to local educational agencies in such a manner as to result in less State aid to any local educational agency which is eligible for payments under this title than such agency would receive if such agency were not so eligible.

(2)(A) Notwithstanding paragraph (1) of this subsection, if a State has in effect a program of State aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local educational agencies of that State, payments under this title for any fiscal year may be taken into consideration by such State in determining the relative—

(i) financial resources available to local educational agencies in that State; and

(ii) financial need of such agencies for the provision of free public education for children served by such agency, provided that a State may consider as local resources funds received under this title only in proportion to the share that local revenues covered under a State equalization program are of total local revenues.

The increase in payments described in sections 3(d)(2)(B), 3(d)(2)(C), 3(d)(2)(D), and 3(d)(3)(B)(ii) shall not be taken into consideration by the State for the purpose of this subparagraph. Whenever a State educational agency or local educational agency will be adversely affected by the operation of this subsection, such agency shall be afforded notice and an opportunity for a hearing prior to the reduction or termination of payments pursuant to this subsection.

(B) The terms "State aid" and "equalize expenditures" as used in this subsection shall be defined by the Secretary by regulation, after consultation with State and local educational agencies affected by this subsection, provided that the term "equalize expenditures" shall not be construed in any manner adverse to a program of State aid for free public education which provides for taking into consideration the additional cost of providing free public education for particular groups or categories of pupils in meeting the special educational needs of such children as handicapped children, economically disadvantaged, those who need bilingual education, and gifted and talented children.

(C)(i) If a State desires to take payments under this section into consideration as provided in this paragraph for any fiscal year, that State shall, not later than sixty days prior to the beginning of such fiscal year, submit notice to the Secretary of its intention to do so. Such notice shall be in such form and be accompanied by such information as to enable the Secretary to determine the extent to which the program of State aid of that State is consistent with the provisions of subparagraph (A). In addition, such notice shall be accompanied by such evidence as the Secretary finds necessary that each local educational agency in that State has been given notice of the intention of the State. If the Secretary determines that the program of State aid of a State submitting notice under this subparagraph is consistent with the provisions of subparagraph (A), the Secretary shall certify such determination to that State.

(ii) Prior to certifying any determination under division (i) for any State for any fiscal year, the Secretary shall give the local educational agencies in that State an opportunity for a hearing at which such agencies may present their views with respect to the consistency of the State aid program of that State with the provisions of subparagraph (A).

(iii) The Secretary shall not finally deny to any State for any fiscal year certification of a determination under division (i) without first giving that State an opportunity for a hearing.

(D) Any State whose program of State aid was certified by the Secretary under subparagraph (C) for fiscal year 1988, but whose program was determined by the Secretary under subparagraph (C)(i) not to meet the requirements of subparagraph (A) for one or more of the fiscal years 1989 through 1992—

(i) shall be deemed to have met the requirements of subparagraph (A) for each of the fiscal years 1989 through 1992; and

(ii) shall not, beginning with fiscal year 1993, and notwithstanding any other provision of this paragraph, take payments under this title into consideration as provided under subparagraph (A) for any fiscal year unless the Secretary has previously certified such State's program for such fiscal year.

HOLD HARMLESS; DISCRETIONARY ALLOCATIONS

(e)(1)(A) For any fiscal year after September 30, 1988, the Secretary shall allocate, to any local educational agency eligible for a payment under section 3(a), not less than the product of—

(i)[1] the number of children in average daily attendance for the fiscal year for which the determination is made under section 3(a); and

(ii)(I) if such agency received a payment under section 3(a) in fiscal year 1987, the per pupil amount paid to that agency in fiscal year 1987; or

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[1] So in original, wrong indention.

(II) if such agency did not receive such a payment in fiscal year 1987, the per pupil amount such agency would have been paid in fiscal year 1987 if such agency had been eligible for payments under section 3(a) and the average daily attendance for such agency for fiscal year 1987 had been equal to the average daily attendance for such agency for the first fiscal year succeeding fiscal year 1988 for which a determination is made under section 3(a).

(B)(i) For any fiscal year beginning after September 30, 1990, the Secretary shall first allocate to any local educational agency that is, and in fiscal year 1987 would have been, described in subsection (c)(3)(A)(i) and that received a payment under section 3(b) for fiscal year 1987, an amount that is not less than the product of—

(I) 100 percent of the per pupil amount paid to such agency under section 3(b) for fiscal year 1987; and

(II) the number of children described in section 3(b) in average daily attendance in the fiscal year for which the determination under section 3(b) is made, not to exceed the number of such eligible children claimed by such agency in fiscal year 1987.

(ii) If the amount appropriated for section 3(b) in any fiscal year exceeds the amount appropriated for such section for fiscal year 1990, the Secretary shall use such excess funds—

(I) first, to allocate to any such agency, for such children that exceed the number of such eligible children claimed by the agency in fiscal year 1987, the amount described in subsection (c)(3)(B)(i)(I); and

(II) second, to allocate remaining funds in accordance with subsection (c)(3)(B).

(C) The provisions of subparagraphs (A) and (B) of this paragraph shall not apply to any local educational agency for which the factor in the determination of the local contribution rate described in section 3(d)(3)(A)(i) in the year for which the determination is made is less than the amount for such factor for fiscal year 1987.

(D)[1] For any fiscal year after September 30, 1991, the Secretary is authorized to modify the per pupil amount described in subparagraph (A) of this paragraph, in any case in which, in the fiscal year for which the determination is made, a local educational agency is described under a different clause of section 5(c)(2)(A) than such agency was in fiscal year 1987.

(E) The provisions of subparagraph (B) of this paragraph shall not apply to any local educational agency which, in the fiscal year for which the determination is made, is not a local educational agency described in section 5(c)(3)(A)(i).

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[1] Section 722(b) of Public Law 101–589 provides the following:

(b) PAYMENTS.—Section 5(e)(1)(D) of Public Law 81–874 (20 U.S.C. 240) (hereafter in this section referred to as the "Act") shall not apply to any local educational agency that was an agency described in section 5(c)(2)(A)(ii) of the Act in fiscal year 1990 but is an agency described in section 5(c)(2)(A)(iii) in fiscal year 1991, 1992, or 1993 as a result of families moving off base due to a landfill or health concern or an environmental hazard, or due to risk assessment, investigation, testing or remediation for such concern or hazard, and any such local educational agency shall be deemed to belong to the category described in section 5(c)(2)(A)(ii) for each of the fiscal years 1991, 1992, and 1993. (20 U.S.C. 240 note)

Section 516 of Public Law 101–517 has a similar provision that only applies to fiscal year 1991.

(2) If sums appropriated for any fiscal year for making payments under this section are not sufficient to pay in full the amount to which each local educational agency is entitled under the previous paragraph, such amounts shall be ratably reduced.

USE OF FUNDS PAID WITH RESPECT TO ENTITLEMENTS INCREASED UNDER SECTION 3(d)(2)(C)

(f) The amount of the payment to any local educational agency for any fiscal year which is attributable to a determination of children for increased payments under subparagraph (C) of section 3(d)(2) shall be used by such agency for special educational programs designed to meet the special educational needs of children with respect to whom such determination is made.

(g)[1] Each local educational agency which is adversely affected or aggrieved by any action of the Secretary under this title shall be entitled to a hearing on, and review of, such action in the same manner as if such agency were a person under the provisions of chapters 5 and 7 of title 5, United States Code.

(h) If any legislation enacted after March 31, 1983, affects the determination of amounts of payments made on the basis of entitlements established under sections 2, 3, and 4 by placing any additional restriction on payments based on the concentration of children counted under subsection (a) or (b) of section 3 in the schools of a local educational agency, such restriction shall be applied, in the case of any State (other than a territory or possession of the United States) within which there is only one local educational agency, by treating each administrative school district within such State as a local educational agency (solely for the purpose of computing the amount of such payments). Treating such an administrative school district as a local educational agency under the preceding sentence shall not result, during fiscal year 1984, 1985, or 1986, in an increase of more than 10 per centum in the amount of funds paid to such State above the amount which would otherwise be paid to such State for such fiscal year.

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[1] Added Nov. 1, 1978, P.L. 95-561, sec. 1008, 92 Stat. 2309.

(20 U.S.C. 240) Enacted Sept. 30, 1950, ch. 1124, P.L. 874, 81st Cong., Title I, sec. 5, 64 Stat. 1106; amended Aug. 8, 1953, ch. 402, P.L. 248, 83d Cong., secs. 6, 7, 67 Stat. 534; amended Aug. 3, 1956, ch. 915, P.L. 949, 84th Cong., Title II, sec. 209, 70 Stat. 972; amended April 11, 1965, P.L. 89–10, Title I, sec. 2, 79 Stat. 27; amended Nov. 3, 1966, P.L. 89–750, Title II, secs. 202, 203, 80 Stat. 1211, 1212; amended Oct. 16, 1968, P.L. 90–576, Title III, sec. 305(a), 82 Stat. 1097; amended April 13, 1970, P.L. 91–230, Title II, sec. 203(c)(4), 84 Stat. 156; subsection 5(a)(2) added June 23, 1972, P.L. 92–318, sec. 411(c)(1), 86 Stat. 339; subsection 5(d)(3) added August 21, 1974, P.L. 93–380, sec. 304(c)(2), 88 Stat. 522, 523; amended August 21, 1974, P.L. 93–380, sec. 304(d)(2), 88 Stat. 523; rewritten August 21, 1974, P.L. 93–380, sec 305(a)(2), 88 Stat. 529, 533; amended April 21, 1976, P.L. 94–273, sec. 3(5), 90 Stat. 376; amended October 12, 1976, P.L. 94–482, Title III, Part B, sec. 330, 90 Stat. 2221; amended Nov. 1, 1978, P.L. 95–561, Titles X, XI, 92 Stat. 2306 et seq. The amendments made by sec. 1007 of P.L. 95–561 are effective with respect to f.y. 1980 and subsequent fiscal years. Section 5 further amended Aug. 6, 1979, P.L. 96–46, sec. 3(b), 93 Stat. 342; amended December 8, 1983, P.L. 98–211, sec. 23, 97 Stat. 1419; amended Aug. 22, 1984, P.L. 98–398, 98 Stat. 1393; amended Oct. 19, 1984, P.L. 98–511, sec. 303(b), 98 Stat. 2389; amended April 28, 1988, P.L. 100–297, secs. 2011, 2015, 102 Stat. 294, 296–299; amended May 11, 1989, P.L. 101–26, sec. 2(c), (d), and (e), 103 Stat. 54–55; amended May 30, 1990, P.L. 101–305, sec. 3(c) and (d), 104 Stat. 256–257; amended Nov. 16, 1990, P.L. 101–589, sec. 722(d), 104 Stat. 2913; amended Aug. 17, 1991, P.L. 102–103, sec. 402, 105 Stat. 508; amended November 13, 1991, P.L. 102–159, sec. 2, 105 Stat. 1042; amended Oct. 23, 1992, P.L. 102–484, sec. 387, 106 Stat. 2388.

CHILDREN FOR WHOM LOCAL AGENCIES ARE UNABLE TO PROVIDE EDUCATION

SEC. 6.[1] (a) In the case of children who reside on Federal property—

(1) if no tax revenues of the State or any political subdivision thereof may be expended for the free public education of such children; or

(2) if it is the judgment of the Secretary, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children,

the Secretary shall make such arrangements (other than arrangements with respect to the acquisition of land, the erection of facilities, interest, or debt service) as may be necessary to provide free public education for such children. Such arrangements to provide free public education may also be made for children of members of the Armed Forces on active duty, if the schools in which free public education is usually provided for such children are made unavailable to them as a result of official action by State or local governmental authority and it is the judgment of the Secretary, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children. To the maximum extent practicable, the local educational agency, or the head of the Federal department or agency, with which any arrangement is made under this section shall take such action as may be necessary to insure that the education provided pursuant to such arrangement is comparable to free public education provided for children in comparable communities in the State, or, in the case of education provided under this section outside the continental United States, Alaska, and Hawaii, comparable to free public education provided for children in the District of Columbia. For purposes of providing such comparable education, all substantive rights, protections and procedural safeguards (including due process procedures), available to children with disabilities age 3 to 5, inclusive, under part B of the Individuals with Disabilities Education Act and to infants and toddlers under part H of such Act shall be applicable to such comparable education by academic year 1992–1993, and all substantive rights, protections and procedural safeguards (including due process procedures), available under part B of such Act shall be applicable to such comparable education for all other eligible children on the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991. For the purpose of providing such comparable education, personnel may be employed and the compensation, tenure, leave, hours of work, and other incidents of the employment relationship may be fixed without regard to the Civil Service Act and rules (5 U.S.C. 631 et seq.) and the following: (1) the Classification Act of 1949, as amended (5 U.S.C. 1071 et seq.); (2) the Annual and Sick Leave Act of 1951, as amended (5 U.S.C. 2061 et seq.); (3) the Federal Employees' Pay Act of 1945, as amended (5 U.S.C. 901 et seq.); (4) the Veterans' Preference Act of 1944, as amended (5 U.S.C. 851 et seq.); and (5) the Performance Rating Act of 1950, as amended (5 U.S.C. 2001 et seq.). Personnel provided for under this subsection outside of the continental United States, Alaska, and Hawaii, shall receive such compensation, tenure, leave, hours of work, and other incidents of employment on the same basis as provided for similar positions in the public schools of the District of Columbia. In any case where education was being provided on January 1, 1955, or thereafter under an arrangement made under this subsection for children residing on an Army, Navy (including the Marine Corps), or Air Force installation, it shall be presumed, for the purposes of this subsection, that no local educational agency is able to provide suitable free public education for the children residing on such installation, until the Secretary and the Secretary of the military department concerned jointly determine, after consultation with the appropriate State educational agency, that a local educational agency is able to do so.

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[1] Section 505(c)(2) of the Omnibus Budget Reconciliation Act of 1981 provides as follows:

(2) Funds appropriated to the Department of Defense shall be available to the Secretary of Defense for payments and arrangements of the kind that may be made by the Secretary of Education under section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress). (20 U.S.C. 241 note)

(b) In any case in which the Secretary makes such arrangements for the provision of free public education in facilities situated on Federal property, he may also make arrangements for providing free public education in such facilities for children residing in any area adjacent to such property with a parent who, during some portion of the fiscal year in which such education is provided, was employed on such property, but only if the Secretary determines after consultation with the appropriate State educational agency (1) that the provision of such education is appropriate to carry out the purposes of this title, (2) that no local educational agency is able to provide suitable free public education for such children, and (3) in any case where in the judgment of the Secretary the need for the provision of such education will not be temporary in duration, that the local educational agency of the school district in which such children reside, or the State educational agency, or both, will make reasonable tuition payments to the Secretary for the education of such children. Such payments may be made either directly or through deductions from amounts to which the local educational agency is entitled under this title, or both, as may be agreed upon between such agency and the Secretary. Any amounts paid to the Secretary by a State or local educational agency pursuant to this section shall be covered into the Treasury as miscellaneous receipts.

(c) In any case in which the Secretary makes arrangements under this section for the provision of free public education in facilities situated on Federal property in Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, he may also make arrangements for providing free public education in such facilities for children residing with a parent employed by the United States, in a grade, position, or classification subject by policy and practice to transfer or reassignment to areas where English is the language of instruction in the schools normally attended by children of Federal employees. Dependents of excepted service professional employees of the schools shall be eligible to attend the schools. In any case where education is being provided under an arrangement made under this subsection, it shall be presumed that no local educational agency is able to provide suitable free public education for the children of eligible parents employed by the United States until the Secretary determines, after consultation with the appropriate State educational agency, that a local educational agency is able to do so.

(d) The Secretary may make an arrangement under this section only with a local educational agency or with the head of a Federal department or agency administering Federal property on which children reside who are to be provided education pursuant to such arrangement or, in the case of children to whom the second sentence of subsection (a) applies, with the head of any Federal department or agency having jurisdiction over the parents of some or all of such children. Except where the Secretary makes arrangements pursuant to the second sentence of subsection (a), arrangements may be made under his section only for the provision of education in facilities of a local educational agency or in facilities situated on Federal property. The Secretary shall ensure that funds provided under such arrangement or arrangements are expended in an efficient manner, and shall require an accounting of funds by such agency at least on an annual basis. The Secretary shall further be provided with data relating to the quality and type of education provided to such children under such arrangement or arrangements.

(e) To the maximum extent practicable, the Secretary shall limit the total payments made pursuant to any such arrangement for educating children within the continental United States, Alaska, or Hawaii, to an amount per pupil which will not exceed the per pupil cost of free public education provided for children in comparable communities in the State. The Secretary shall limit the total payments made pursuant to any arrangement for educating children outside the continental United States, Alaska, or Hawaii, to an amount per pupil which will not exceed the amount he determines to be necessary to provide education comparable to the free public education provided for children in the District of Columbia.

(f) If no tax revenues of a State or of any political subdivision of the State may be expended for the free public education of children who reside on any Federal property within the State, or if no tax revenues of a State are allocated for the free public education of such children, then the property on which such children reside shall not be considered Federal property for the purposes of sections 3 and 4 of this Act. If a local educational agency refuses for any other reason to provide in any fiscal year free public education for children who reside on Federal property which is within the school district of that agency or which, in the determination of the Secretary, would be within that school district if it were not Federal property, there shall be deducted from any amount to which the local educational agency is otherwise entitled for that year under section 3 or 4 an amount equal to (1) the amount (if any) by which the cost to the Secretary of providing free public education for that year for each such child exceeds the local contribution rate of that agency for that year, multiplied by (2) the number of such children.

(g) The Secretary shall ensure the establishment of an elective school board in schools assisted under this section. Such school board shall be composed of a minimum of three members, elected by the parents of students in attendance at such school. The Secretary shall, by regulation, establish procedures for carrying out such school board elections as provided in this subsection.

(h) A school board established pursuant to subsection (g) shall be empowered to oversee school expenditures and operations, subject to audit procedures established by the Secretary, and other provisions of this section.

(i) Notwithstanding any other provision of law, a local educational agency receiving funds under section 3 may also receive funds under section 6.

(20 U.S.C. 241) Enacted Sept. 30, 1950, ch. 1124, P.L. 874, 81st Cong., sec. 6, 64 Stat. 1107; amended Aug. 8, 1953, ch. 402, P.L. 248, 83d Cong., sec. 8, 67 Stat. 535; amended Aug. 1, 1955, ch. 446, P.L. 204, 84th Cong., 69 Stat. 433; amended Aug. 1, 1956, ch. 852, P.L. 896, 84th Cong., sec. 10, 70 Stat. 909; amended May 6, 1960, P.L. 86–449, Title V, sec. 501, 74 Stat. 89; amended April 11, 1965, P.L. 89–10, Title I, secs. 2, 4(d)(2), 79 Stat. 27, 35; amended July 21, 1965, P.L. 89–77, sec. 2, 79 Stat. 243; amended Nov. 3, 1966, P.L. 89–750, Title II, sec. 204, 80 Stat. 1212; subsection (g) repealed April 13, 1970, P.L. 91–230, Title IV, sec. 401(f)(1) and superseded by sec. 422 of P.L. 90–247, Title IV, as amended (20 U.S.C. 1232a); amended (and subsections (g) and (h) added) Nov. 1, 1978, P.L. 95–561, sec. 1009, 1031, 92 Stat. 2309, 2310, 2312; amended April 28, 1988, P.L. 100–297, secs. 2011, 2016, 102 Stat. 294, 299; amended October 7, 1991, P.L. 102–119, sec. 23(a), 105 Stat. 604.

ASSISTANCE FOR CURRENT SCHOOL EXPENDITURES IN CASES OF CERTAIN DISASTERS

SEC. 7.[1] (a) In any case in which—

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[1] Section 306 of Public Law 101–517 provides the following:

IMPACT AID

SEC. 306. Notwithstanding any other provision of law, in carrying out the provisions of section 7 of Public Law 81–874 (20 U.S.C. 241–1) (as amended) and section 16 of Public Law 81–815

(1) the Director of the Office of Emergency Planning determines with respect to any local educational agency (including for the purpose of this section any other public agency which operates schools providing technical, vocational, or other special education to children of elementary or secondary school age) that such agency is located in whole or in part within an area which after August 30, 1965, and prior to October 1, 1993, has suffered a major disaster as the result of any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which, in the determination of the President pursuant to sections 102(2) and 301 of the Disaster Relief Act of 1974[1], is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government; and

(2) the Governor of the State in which such agency is located has certified the need for disaster assistance under this section, and has given assurance of expenditure of a reasonable amount of the funds of the government of such State, or of any political subdivision thereof, for the same or similar purposes with respect to such catastrophe;

and if the Secretary determines with respect to such agency that—

(3) such agency is utilizing or will utilize all State and other financial assistance available to it for the purpose of meeting the cost of providing free public education for the children attending the schools of such agency, but as a result of such disaster it is unable to obtain sufficient funds for such purpose and requires an amount of additional assistance equal to at least $10,000 or 5 per centum of such agency's current operating expenditures during the fiscal year preceding the one in which such disaster occurred, whichever is less, and

(4) in the case of any such major disaster to the extent that the operation of private elementary and secondary schools in the school attendance area of such local educational agency has been disrupted or impaired by such disaster, such local educational agency has made provisions for the conduct of educational programs under public auspices and administration in which children enrolled in such private elementary and secondary schools may attend and participate: Provided, That nothing contained in this Act shall be construed to authorize the making of any payment under this Act for religious worship or instruction,

the Secretary may provide to such agency the additional assistance necessary to provide free public education to the children attending the schools of such agency, upon such terms and in such amounts (subject to the provisions of this section) as the Secretary may consider to be in the public interest. Such additional assistance may be provided for a period not greater than a five-fiscal-year period

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(20 U.S.C. 646) (as amended), the Secretary of Education shall reduce or waive the administrative guideline of a 25 percent non-Federal share upon a showing of—

(1) financial hardship by the State or political subdivision thereof in the provision of; or

(2) a good faith effort by the State or political subdivision thereof to provide;

the non-Federal share for purposes related to the disaster for which Federal assistance is sought.

This title may be cited as the "Department of Education Appropriations Act, 1991".

[1] Probably should read "102(2) and 401 of the Disaster Relief and Emergency Assistance Act". The amendment made by section 109(i) of P.L. 100–707, 102 Stat. 4709, probably should have been made to section 7(a)(1) rather than 7(a)(1)(A).

beginning with the fiscal year in which it is determined pursuant to clause (1) of this subsection that such agency suffered a disaster. The amount so provided for any fiscal year shall not exceed the amount which the Secretary determines to be necessary to enable such agency, with the State, local, and other Federal funds available to it for such purpose, to provide a level of education equivalent to that maintained in the schools of such agency prior to the occurrence of such disaster, taking into account the additional costs reasonably necessary to carry out the provisions of clause (4) of this subection. The amount, if any, so provided for the second, third, and fourth fiscal years following the fiscal year in which it is so determined that such agency has suffered a disaster shall not exceed 75 per centum, 50 per centum, and 25 per centum, respectively, of the amount so provided for the first fiscal year following such determination.

(b) In addition to and apart from the funds provided under subsection (a), the Secretary is authorized to provide to such agency an amount which he determines to be necessary to replace instructional and maintenance supplies, equipment, and materials (including textbooks) destroyed or seriously damaged as a result of such disaster, to make minor repairs, and to lease or otherwise provide (other than by acquisition of land or erection of facilities) school and cafeteria facilities needed to replace temporarily such facilities which have been made unavailable as a result of the disaster.

(c) There is hereby authorized to be appropriated for each fiscal year such amounts as may be necessary to carry out the provisions of this section. Pending such appropriation, the Secretary is authorized to expend (without regard for subsections (a) and (e) of section 3679 of the Revised Statutes (31 U.S.C. 665)) from any funds appropriated to the Office of Education and at that time available to the Secretary, such sums as may be necessary for providing immediate assistance under this section. Expenditures pursuant to the preceding sentence shall—

(1) be reported by the Secretary to the Committees on Appropriations and Education and Labor of the House of Representatives and the Committees on Appropriations and Labor and Human Resources of the Senate within thirty days of the expenditure;

(2) be reimbursed from the appropriations authorized by the first sentence of this subsection.

The report required to the Committees on Appropriations by clause (1) in the preceding sentence shall constitute a budget estimate within the meaning of section 201(a)(5) of the Act of June 10, 1921 (31 U.S.C. 11(a)(5)).

(d) No payment may be made to any local educational agency under this section except upon application therefor which is submitted through the appropriate State educational agency and is filed with the Secretary in accordance with the regulations prescribed by him. In determining the order in which such applications shall be approved, the Secretary shall consider the relative educational and financial needs of the local educational agencies which have submitted approvable applications. The Secretary shall complete action of approval or disapproval of an application within 90 days of the filing of an application.

(e) Amounts paid by the Secretary to local educational agencies under this section may be paid in advance or by way of reimbursement and in such installments as the Secretary may determine. Any funds paid to a local educational agency and not expended or otherwise used for the purposes for which paid shall be repaid to the Treasury of the United States.

(f) Funds available for this section for any fiscal year shall also be available for section 16 of the Act of September 23, 1950 (Public Law 815, Eighty-first Congress).

(20 U.S.C. 241–1) Enacted Nov. 1, 1965, P.L. 89–313, sec. 2, 79 Stat. 1159; amended Jan. 2, 1968, P.L. 90–247, Title II, sec. 218, 81 Stat. 811; amended April 13, 1970, P.L. 91–230, Title II, sec. 201(c), 84 Stat. 154; amended May 22, 1974, P.L. 93–288, title VI, sec. 602(e), 88 Stat. 163; amended August 21, 1974, P.L. 93–380, sec. 303(a)(3), 88 Stat. 522; amended April 21, 1976, P.L. 94–273, sec. 3(5), 90 Stat. 376; amended Nov. 1, 1978, P.L. 95–561, sec. 1010(a), 92 Stat. 2310; amended Aug. 6, 1979, P.L. 96–46, sec. 3(a), 93 Stat. 342; amended Oct. 19, 1984, P.L. 98–511, sec. 301(a), 98 Stat. 2388; amended April 28, 1988, P.L. 100–297, secs. 2011, 2017, 102 Stat. 294, 299–300; amended Nov. 23, 1988, P.L. 100–707, sec. 109(i), 102 Stat. 4709.

TITLE IV[1]—GENERAL PROVISIONS

ADMINISTRATION

SEC. 401.[2]

(a) (Repealed).

(b) The Secretary shall administer this Act, and he may make such regulations and perform such other functions as he finds necessary to carry out the provisions of this Act.

(c) The Secretary shall include in his annual report to the Congress a full report of the administration of his functions under this Act, including a detailed statement of receipts and disbursements.

(20 U.S.C. 242) Enacted Sept. 30, 1950, ch. 1124, P.L. 874, 81st Cong., Title III, sec. 301, formerly sec. 7, 64 Stat. 1107; redesignated April 11, 1965, P.L. 80–10 Title I, sec. 3(c)(1), 79 Stat. 35; amended Nov. 3, 1966, P.L. 89–750, Title II, sec. 205, 80 Stat. 1212; subsection (a) repealed Apr. 13, 1970, P.L. 91–230, Title IV, sec. 401(f)(1) and superseded by sec. 422 of P.L. 90–247, Title IV, as amended (20 U.S.C. 1232a); redesignated June 23, 1972, P.L. 92–318, sec. 411, 86 Stat. 334; amended Apr. 28, 1988, P.L. 100–297, sec. 2011, 102 Stat. 294.

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[1] Section 2020 of Public Law 100–297 provides the following:

SEC. 2020. REGULATION REQUIREMENTS.

No regulations may be established to carry out the provisions of this Act unless such regulations will become final only after a period for comment which is not less than 90 days. No provision of the regulations may have a retroactive effect which results in the recovery of assistance by the United States (other than such recovery based on regulations in effect at the time the assistance was made). To the extent that the provisions of section 431 of the General Education Provisions Act are not inconsistent with the provisions of this section, the provisions of section 431 shall apply to regulations established under this Act. (20 U.S.C. 236 note)

(The references to "this Act" are probably references to the Impact Aid Reauthorization Act of 1988.)

[2] Title IV and section 401 of the Act of Sept. 30, 1950, P.L. 81–874. References in this title to Title I of the Elementary and Secondary Education Act of 1965, are to its original designation on enactment, "Title II" of Public Law 81–874.

USE OF OTHER FEDERAL AGENCIES; TRANSFER AND AVAILABILITY OF APPROPRIATIONS

SEC. 402. (a) In carrying out his functions under this Act, the Secretary is authorized, pursuant to proper agreement with any other Federal department or agency, to utilize the services and facilities of such department or agency, and, when he deems it necessary or appropriate, to delegate to any officer or employee thereof the function under section 6 of making arrangements for providing free public education. Payment to cover the cost of such utilization or of carrying out such delegated function shall be made either in advance or by way of reimbursement, as may be provided in such agreement.

(b) All Federal departments or agencies administering Federal property on which children reside, and all such departments or agencies principally responsible for Federal activities which may occasion assistance under title I, shall to the maximum extent practicable comply with requests of the Secretary for information he may require in carrying out the purposes of title I.

(c) Such portion of the appropriations of any other department or agency for the fiscal year ending June 30, 1951, as the Director of the Bureau of the Budget determines to be available for the same purposes as title I, shall, except to the extent necessary to carry out during such year contracts made prior to the enactment of title I, be transferred to the Secretary for use by him in carrying out such purposes.

(d)[1] No appropriation to any department or agency of the United States, other than an appropriation to carry out this Act, shall be available for the employment of teaching personnel for the provision of free public education for children in any State or for payments to any local educational agency (directly or through the State educational agency) for free public education for children, except that nothing in the foregoing provisions of this subsection shall affect the availability of appropriations for the maintenance and operation of school facilities (1) on Federal property under the control of the Atomic Energy Commission or (2) by the Bureau of Indian Affairs, or the availability of appropriations for the making of payments directed to be made by section 91 of the Atomic Energy Community Act of 1955, as amended, or the availability of appropriations under the Act of April 16, 1934, commonly referred to as the Johnson-O'Malley Act (25 U.S.C., sec. 452).

(20 U.S.C. 243) Enacted Sept. 30, 1950, ch. 1124, P.L. 874, 81st Cong., Title III, sec. 302, formerly sec. 8, 64 Stat. 1108; amended Aug. 8, 1953, ch. 402, P.L. 248, 83d Cong., sec. 9, 67 Stat. 536; amended Aug. 4, 1955, ch. 543, P.L. 221, 84th Cong., Ch. 11, sec 202, 69 Stat. 485; amended Aug. 12, 1955, ch. 868, P.L. 382, 84th Cong., sec. 1, 69 Stat. 713; amended Aug. 3, 1956, ch. 915, P.L. 949, 84th Cong., Title II, sec. 210, 70 Stat. 972; amended Aug. 12, 1958, P.L. 85–620, Title II sec. 204, 72 Stat. 560; redesignated, and amended April 11, 1965, P.L. 89–10, Title I, sec. 3(c), 79 Stat. 35; amended April 13, 1970, P.L. 91–230, Title IV, sec. 401(c), 84 Stat. 173. Repealed provision superseded by sec. 411 of P.L. 91–247, Title IV, as amended (20 U.S.C. 1231(a)); redesignated June 23, 1972, P.L. 92–318, sec. 411, 86 Stat. 334; amended Apr. 28, 1988, P.L. 100–297, sec. 2011, 102 Stat. 294.

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[1] Section 505(c)(1) of the Omnibus Education Reconciliation Act of 1981 (P.L. 97–35, 95 Stat. 442) provided as follows:

(c)(1) Subsection (d) of section 402 of the Act of September 30, 1950 (Public Law 874, 81st Congress), shall not apply during fiscal year 1982, or any succeeding fiscal year.

DEFINITIONS

SEC. 403. For the purposes of this Act—

(1) The term "Federal property" means real property which is owned by the United States or is leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. Such term includes (A) except for purposes of section 6, real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or Indian tribes, which is subject to restrictions on alienation imposed by the United States, (B) for one year beyond the end of the fiscal year in which occurred the sale or transfer thereof by the United States, any property considered prior to such sale or transfer to be Federal property for the purposes of this Act, (C) any low-rent housing (whether or not owned by the United States) which is part of a low-rent housing project assisted under the United States Housing Act of 1937, section 516 of the Housing Act of 1949, or part B of title III of the Economic Opportunity Act of 1964, (D) any school which is providing flight training to members of the Air Force under contractual arrangements with the Department of the Air Force at an airport which is owned by a State or a political subdivision of a State and (E) any property owned by a foreign government or by an international organization which by reason of such ownership is not subject to taxation by the State in which it is located or a subdivision thereof. Such term also includes any interest in Federal property (as defined in the foregoing provisions of this paragraph) under an easement, lease, license, permit, or other arrangement, as well as any improvements of any nature (other than pipelines or utility lines) on such property even though such interests or improvements are subject to taxation by a State or political subdivision of a State or by the District of Columbia. Notwithstanding the foregoing provisions of this paragraph, such term does not include any real property under the jurisdiction of the Post Office Department and used primarily for the provision of postal service. Real property which qualifies as Federal property under clause (A) of this paragraph shall not lose such qualification because it is used for a low-rent housing project.

(2) The term "child" means any child who is within the age limits for which the applicable State provides free public education.

(3) The term "parent" includes a legal guardian or other person standing in loco parentis.

(4) The term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State.

(5) The term "current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from

funds granted under chapter 1 or 2 of title I of the Elementary and Secondary Education Act of 1965.

(6) For purposes of title I, the term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public elementary and secondary education through grade 12[1] in a county, township, independent, or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public education. Such term does not include any agency or school authority that the Secretary determines, on a case-by-case basis—

(A)[2] was constituted or reconstituted primarily for the purpose of receiving assistance under this Act or increasing the amount of that assistance;

(B)[2] is not constituted or reconstituted for legitimate educational purposes; or

(C)[2] was previously part of a school district upon being constituted or reconstituted.

For[2] the purpose of carrying out the provisions of section 3(a), such term includes any agency or school authority that has had an arrangement with a nonadjacent school district for the education of children of persons who reside or work on an installation of the Department of Defense for more than 25 years, but only if the Secretary determines that there is no single school district adjacent to the school district in which the installation is located that is capable of educating all such children.

(7) The term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

(8) The term "State" means a State, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, the Northern Mariana Islands, or the Virgin Islands.

(9) The term "Secretary" means the Secretary of Education.

(10) Average daily attendance shall be determined in accordance with State law, except that (A) the average daily attendance of children with respect to whom payment is to be made under section 3 or 4 of this Act shall be determined in accordance with regulations of the Secretary, and (B) notwithstanding any other provision of this Act, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this Act the attendance of such child at such school shall be held and considered (i) to be attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (ii) not to be attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract. A child shall, for the purposes of section 3, be deemed to be in attendance at a school of a local edu-

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[1] For purposes of this paragraph, the limitation of free public education to "elementary and secondary education through grade 12", added Nov. 1, 1978 by P.L. 95–561, sec. 1012, 92 Stat. 2310, is effective Oct. 1, 1979.

[2] So in original. Margin is incorrect. Probably should be moved two ems to the left.

cational agency if such child is determined to be federally connected under clause (1) or (2) of section 3(a) or under clause (1), (2), or (3) of section 3(b) for any fiscal year and if such child is attending a school other than a school of such agency because such child is disabled (as defined in section 602(1)[1] of the Education of the Handicapped Act[2]) and if such agency makes a tuition payment on behalf of such child to such school for such fiscal year. Regulations promulgated by the Secretary in accordance with clause (A) of this paragraph shall permit the conversion of average daily membership to average daily attendance for local educational agencies in States which reimburse local educational agencies based upon average daily membership and which do not require local educational agencies to keep records based on average daily attendance.[3]

(11) The term "county" means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

(12) The term "construction" includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

(13) The term "school facilities" means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

(14) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual in-

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[1] So in original. The reference to "602(1)" probably should be to "602(a)(1)". Section 2(6) of P.L. 98-199 (97 Stat. 1357) inserted a subsection "(a)" designation after section "602" of the Education of the Handicapped Act.

[2] Pursuant to P.L. 101-476, sec. 901(a)(3), 104 Stat.1142, any reference to the Education of the Handicapped Act shall be considered to be a reference to the Individuals with Disabilities Education Act.

[3] The preceding two sentences added Nov. 1, 1978, P.L. 95-561, sec. 1013, 1014, 92 Stat. 2310, 2311.

structional materials, and books, periodicals, documents, and other related materials.

(20 U.S.C. 244) Enacted Sept. 30, 1950, ch. 1124, P.L. 874, 81st Cong., Title III, sec. 303, formerly sec. 9, 64 Stat. 1108; amended Aug. 8, 1953, ch. 402, P.L. 248, 83d Cong. sec. 10, 67 Stat. 536; amended Aug. 1, 1956, P.L. 896, 84th Cong., sec. 10, 70 Stat. 909; amended Aug. 3, 1956, ch. 915, P.L. 949, 84th Cong., Title II, sec. 211, 70 Stat. 972; amended Aug. 12, 1958, P.L. 85–620, Title II, sec. 205, 72 Stat. 560; amended June 25, 1959, P.L. 86–70, sec. 18(d)(4), 73 Stat. 145; amended July 12, 1960, P.L. 86–624, sec. 14(d)(4), 74 Stat. 414; amended Oct. 16, 1964, P.L. 88–665, Title XI, sec. 1102(b), 78 Stat. 1109; redesignated and amended April 11, 1965, P.L. 89–10, Title I, secs 3(c)(1), 4(a)–(c), (d)(1), (e), 79 Stat. 35; amended Nov. 1, 1965, P.L. 89–313, sec. 6(c), 79 Stat. 1162; amended Nov. 3, 1966, P.L. 89–750, Title I, sec. 117(a)(1), (b) 80, Stat. 1198, 1199. Title II, sec. 206, 80 Stat. 1213; amended Jan. 2, 1968, P.L. 90–247, Title II, sec. 201, 81 Stat. 806; amended Apr. 13, 1970, P.L. 91–230, Title II, sec. 203(b), 84 Stat. 156. Amendments effective after June 30, 1970; redesignated June 23, 1972, P.L. 92–318, sec. 411, 86 Stat. 334; amended August 21, 1974, P.L. 93–380, sec. 304 (d)(1), 88 Stat. 523; P.L. 93–380, sec. 101(a)(9)(K), 88 Stat. 501; amended April 21, 1976, P.L. 94–273, sec. 49(d), 90 Stat 382; amended October 12, 1976, P.L. 94–482, Title V, Part A, sec. 501(n), 90 Stat. 2237, 2238; amended Nov. 1, 1978, P.L. 95–561, Title X, 92 Stat. 2306 et seq; amended April 28, 1988, P.L. 100–297, secs. 2011, 2021, 102 Stat. 294, 300; amended May 30, 1990, P.L. 101–305, sec. 3(f), 104 Stat. 257; amended Oct. 30, 1990, P.L. 101-476, sec. 901(f)(2), 104 Stat. 1151.

Public Law 815, 81st Congress

AN ACT Relating to the construction of school facilities in areas affected by Federal activities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PURPOSE AND APPROPRIATION

SECTION 1. (a) The purpose of this Act is to provide assistance for the construction of urgently needed minimum school facilities in school districts which have had substantial increases in school membership as a result of new or increased Federal activities. There are hereby authorized to be appropriated for the fiscal year ending June 30, 1959, and each fiscal year thereafter, such sums as the Congress may determine to be necessary for such purpose. Sums so appropriated, other than sums appropriated for administration, shall remain available until expended.

(b) There are authorized to be appropriated $25,000,000 for fiscal year 1989, $26,000,000 for fiscal year 1990, $27,000,000 for fiscal year 1991, $28,000,000 for fiscal year 1992, and $29,000,000 for fiscal year 1993, to carry out the provisions of the Act of September 23, 1950 (Public Law 815, Eighty-first Congress).

(20 U.S.C. 631) Similar provision enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 522 as Title III, sec. 301, P.L. 815, 1st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 548; amended April 28, 1988, P.L. 100–297, secs. 2031(b), 2032, 102 Stat. 301.

PORTION OF APPROPRIATIONS AVAILABLE FOR PAYMENTS

SEC. 2. For each fiscal year the Secretary shall determine the portion of the funds appropriated pursuant to section 1 which shall be available for carrying out the provisions of sections 9 and 10. The remainder of such funds shall be available for paying to local educational agencies the Federal share of the cost of projects for the construction of school facilities for which applications have been approved under section 6.

(20 U.S.C. 632) Similar provision enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 522 as Title III, sec. 302, P.L. 815, 81st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 548; amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

ESTABLISHMENT OF PRIORITIES

SEC. 3. The Secretary shall from time to time set dates by which applications for payments under this Act with respect to construction projects must be filed, except that the last such date with respect to applications for payments on account of children referred to in paragraphs (2) or (3) of section 5(a) shall be not later that September 30, 1993. The Secretary shall by regulation prescribe an order of priority, based on relative urgency of need, to be followed in approving applications in the event the funds appropriated under this Act and remaining available on any such date for payment to local educational agencies are less than the Federal share of the cost of the projects with respect to which applications have been filed prior to such date (and for which funds under this Act have not already been obligated). Only applications meeting the conditions for approval under this Act (other than section 6(b)(2)(C)) shall be considered applications for purposes of the preceding sentence.

(20 U.S.C. 633) Similar provisions enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 522 as Title III, sec. 303, P.L. 815, 81st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title i, sec. 101, 72 Stat 548; amended Oct. 3, 1961, P.L. 87–344, Title I, sec. 101(a), 75 Stat. 759; amended Dec. 18, 1963, P.L. 88–210, Title III, sec. 301(a), formerly sec. 301(a), 77 Stat. 419; amended Oct. 16, 1964, P.L. 88–665, Title XI, sec. 1101(a), 78 Stat. 1109; amended Nov. 3, 1966, P.L. 89–750, Title II, sec. 221, 80 Stat. 1213; amended Jan. 2, 1968, P.L. 90–247, Title III, sec. 301(d)(1), 81 Stat. 813; redesignated Oct. 16, 1968, P.L. 90–576, Title I, sec. 101(a)(1), 82 Stat. 1064; amended April 13, 1970, P.L. 91–230, Title II, sec. 201(a)(1), 84 Stat. 154, 156; amended August 21, 1974, P.L. 93–380, sec. 301(a)(1), 88 Stat. 521; amended April 21, 1976, P.L. 94–273, sec. 2(13), 90 Stat. 375; amended Nov. 1, 1978, P.L. 95–561, sec. 1021(a), 92 Stat. 2311; amended Oct. 19, 1984, P.L. 98–511, sec. 301(b), 98 Stat. 2388; amended April 28, 1988, P.L. 100–297, secs. 2031, 2032, 102 Stat. 301.

FEDERAL SHARE FOR ANY PROJECT

SEC. 4. Subject to section 5 (which imposes limitations on the total of the payments which may be made to any local educational agency), the Federal share of the cost of a project under this Act shall be equal to such cost, but in no case to exceed the cost, in the school district of the applicant, of constructing minimum school facilities, and in no case to exceed the cost in such district of constructing minimum school facilities for the estimated number of children who will be in the membership of the schools of such agency at the close of the second year following the increase period and who will otherwise be without such facilities at such time. For the purposes of the preceding sentence, the number of such children who will otherwise be without such facilities at such time shall be determined by reference to those facilities which (1) are built or under contract as of the date on which the Secretary set, under section 3, the earliest date on or before which the application for such project was filed, or (2) as of the date the application for such project is approved, are included in a project the application for which has been approved under this Act.

(20 U.S.C. 634) Similar provision enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 522, as Title III, sec. 304, P.L. 815, 81st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 549; amended Nov. 3, 1966, P.L. 89–750, Title II, sec. 224, 80 Stat. 1214; amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

LIMITATIONS ON TOTAL PAYMENTS TO ANY LOCAL EDUCATIONAL AGENCY

SEC. 5. (a) Subject to the limitations in subsections (c) and (d), the total of the payments to a local educational agency under this Act may not exceed the sum of the following:

(1) the estimated increase, since the base year, in—

(A) the number of children determined with respect to such agency under section 3(a)(2) of the Act of September 30, 1950, multiplied by 100 per centum of the average per pupil cost of constructing minimum school facilities in the State in which the school district of such agency is situated;

(B) the number of children determined with respect to such agency under section 3(a)(1) and such Act multiplied by 90 per centum of such cost;

(2) the estimated increase, since the base year, in—

(A) the number of children determined with respect to such agency under section 3(b)(3) of such Act multiplied by 50 per centum of such cost;

(B) the number of children determined with respect to such agency under section 3(b)(1) of such Act multiplied by 45 per centum of such cost; and

(C) the number of children determined with respect to such agency under section 3(b)(2) of such Act multiplied by 40 per centum of such cost;

(3) the estimated increase, since the base year, in the number of children whose membership results directly from activities of the United States (carried on either directly or through a contractor), multiplied by 45 per centum of the average per pupil cost of constructing minimum school facilities in the State in which the school district of such agency is situated. For purposes of this paragraph, the Secretary shall not consider as activities of the United States those activities which are carried on in connection with real property excluded from the definition of Federal property by the last sentence of paragraph (1) of section 15, but shall (if the local educational agency so elects pursuant to subsection (b)) consider as children whose membership results directly from activities of the United States children residing on Federal property or residing with a parent employed on Federal property; and

(4) for the fiscal year ending June 30, 1967, the estimated number of children, without regard to the limitation in subsection (d), whose membership in the schools of such local educational agency resulted from a change in residence from land transferred to Mexico as part of a relocation of an international boundary of the United States, multiplied by 50 per centum of the average per pupil cost of constructing minimum school facilities in the State in which the school district of such agency is situated; but if, by reason of any other provision of law, this clause is not considered in computing the maximum payments a local educational agency may receive for the fiscal year ending June 30, 1967, the additional amount such agency would have been entitled to receive shall be added to such agency's entitlement for the first fiscal year for which funds appropriated to carry out this Act may be used for such purpose.

In computing for any local educational agency the number of children in an increase under paragraph (1), (2), or (3), the estimated number of children described in such paragraph who will be in the membership of the schools of such agency at the close of the increase period shall be compared with the estimated number of such children in the average daily membership of the schools of such agency during the base year.

(b) If two or more of the paragraphs of subsection (a) apply to a child, the local educational agency shall elect which of such paragraphs shall apply to such child, except that, notwithstanding the election of a local educational agency to have paragraph (2) apply to a child instead of paragraph (1), the determination of the maximum amount for such agency under subsection (a) shall be made without regard to such election.

(c) A local educational agency shall not be eligible to have any amount included in its maximum by reason of paragraph (1), (2), or (3) of subsection (a) unless the increase in children referred to in such paragraph, prior to the application of the limitation in subsection (d) is at least twenty and—

(1) in the case of paragraph (1) or (2), is—

(A) equal to at least 10 per centum of the number of all children who were in the average daily membership of the schools of such agency during the base year, or

(B) at least one thousand five hundred, whichever is the lesser; and

(2) In the case of paragraph (3), is—

(A) equal to at least 10 per centum of the number of all children who were in the average daily membership of the schools of such agency during the base year, or

(B) at least two thousand five hundred,

whichever is the lesser: Provided, That no local educational agency shall be regarded as eligible under this paragraph (2) unless the Secretary finds that the construction of additional minimum school facilities for the number of children in such increase will impose an undue financial burden on the taxing and borrowing authority of such agency.

(d) If (1) the estimated number of nonfederally connected children who will be in the membership of the schools of a local educational agency at the close of the increase period is less than (2) 106 per centum of the number of such children who were in the average daily membership of such agency during the base year, the total number of children counted for purposes of subsection (a) with respect to such agency shall be reduced by the difference between (1) and (2) hereof, except that the number of children counted for the purposes of paragraph (1) or (2) of subsection (a) shall not be reduced by more than one thousand five hundred and that the number of children counted for the purposes of paragraph (3) of subsection (a) shall not be reduced by more than two thousand five hundred. For purposes of this subsection, all children in the membership of a local educational agency shall be counted as nonfederally connected children except children whose membership in the base year and increase period was compared in computing an increase which meets the requirements of subsection (c).

(e) Notwithstanding the provisions of subsections (c), (d), and (f) of this section, whenever and to extent that, in his judgment, exceptional circumstances exist which make such action necessary to avoid inequity and avoid defeating the purposes of this Act, the Secretary may do any one or more of the following: (1) he may waive or reduce the minimum number requirement or any percentage requirement or requirements in subsection (c); (2) he may waive the requirement contained in the first sentence of subsection (d) or reduce the percentage specified in clause (2) of such sentence; or (3) he may waive or reduce the requirement contained in subsection (f).

(f) In determining under this section the total of the payments which may be made to a local educational agency on the basis of any application, the total number of children counted for purposes of paragraph (1), (2), or (3), as the case may be, of subsection (a) may not exceed—

(1) the number of children whose membership at the close of the increase period for the application is compared with membership in the base period for purposes of that paragraph, minus,

(2) the number of such children whose membership at the close of the increase period was compared with membership in the base year for purposes of such paragraph under the last previous application, if any, of the agency on the basis of which any payment has been or may be made to that agency.

(20 U.S.C. 635) Similar provision enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 523, as Title III, sec. 305, P.L. 815, 81st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 549; amended Nov. 1, 1965, P.L. 89–313, sec. 5, 79 Stat. 1161; amended Nov. 3, 1966, P.L. 89–750, Title II, secs. 222 (a), (e), 223, 226, 227, 80 Stat. 1213–1215; amended Jan. 2, 1968, P.L. 90–247, Title II, sec. 205(b), 207, 81 Stat. 809; amended April 13, 1970, P.L. 91–230, Title II, sec. 203(a)(3), 204, 84 Stat. 155, 157; amended May 21, 1970, P.L. 90–260, 84 Stat. 254; amended August 21, 1974, P.L. 93–380, sec. 302(a), 88 Stat. 521, 522; amended Nov. 1, 1978, P.L. 95–561, sec. 1022, 92 Stat. 2312; amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

APPLICATIONS

SEC. 6. (a) No payment may be made to any local educational agency under this Act except upon application therefor which submitted through the appropriate State educational agency and is filed with the Secretary in accordance with regulations prescribed by him.

(b)(1) Each application by a local educational agency shall set forth the project for the construction of school facilities for such agency with respect to which it is filed, and shall contain or be supported by—

(A) a description of the project and the site therefor, preliminary drawings of the school facilities to be constructed thereon, and such other information relating to the project as may reasonably be required by the Secretary;

(B) assurance that such agency has or will have title to the site, or the right to construct upon such site school facilities as specified in the application and to maintain such school facilities on such site for a period of not less than twenty years after the completion of the construction;

(C) assurance that such agency has legal authority to undertake the construction of the project and to finance any non-Federal share of the cost thereof as proposed, and assurance that adequate funds to defray any such non-Federal share will be available when needed;

(D) assurance that such agency will cause work on the project to be commenced within a reasonable time and prosecuted to completion with reasonable diligence;

(F) assurance that the school facilities of such agency will be available to the children for whose education contributions are provided in this Act on the same terms, in accordance with the laws of the State in which the school district of such agency is situated, as they are available to other children in such school district; and

(G) assurance that such agency will from time to time prior to the completion of the project submit such report relating to the project as the Secretary may reasonably require.

(2) The Secretary shall approve any application if he finds (A) that the requirements of paragraph (1) have been met and that approval of the project would not result in payments in excess of those permitted by sections 4 and 5, (B) after consultation with the State and local educational agencies, that the project is not inconsistent with overall State plans for the construction of school facilities, and (C) that there are sufficient Federal funds available to pay the Federal share of the cost of such project and of all other projects for which Federal funds have not already been obligated and applications for which, under section 3, have a higher priority: *Provided,* That the Secretary may approve any application for payments under this Act at any time after it is filed and before any priority is established with respect thereto under section 3 if he determines that—

(i) on the basis of information in his possession, it is likely that the urgency of the need of the local educational agency is such that it would have a priority under section 3 which would qualify it for payments under this Act when such priorities are established, and

(ii) the number of children in the increase under section 5(a) is in large measure attributable to children who reside or will reside in housing newly constructed on Federal property.

(c) No application under this Act shall be disapproved in whole or in part until the Secretary of Education has afforded the local educational agency reasonable notice and opportunity for hearing.

(20 U.S.C. 636) Provisions similar in part enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 524, as Title III, sec. 303 of P.L. 815, 81st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 551, as sec. 6, P.L. 815, 81st Cong.; subsection (b)(1)(E) repealed April 13, 1970, P.L. 91–230, Title IV, sec. 401(g)(4) and superseded by sec. 423 of P.L. 90–247, Title IV, as amended (20 U.S.C. 1232b); amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

PAYMENTS

SEC. 7. (a) Upon approving the application of any local educational agency under section 6, the Secretary of Education shall pay to such agency an amount equal to 10 per centum of the Federal share of the cost of the project. After final drawings and specifications have been approved by the Secretary of Education and the construction contract has been entered into, the Secretary shall, in accordance with regulations prescribed by him and at such times and in such installments as may be reasonable, pay to such agency the remainder of the Federal share of the cost of the project.

(b) Any funds paid to a local educational agency under this Act and not expended for the purposes for which paid shall be repaid to the Treasury of the United States.

(20 U.S.C. 637) Similar provision enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 525, as Title III, sec. 307 of P.L. 815, 81st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 552, as sec. 7, P.L. 815, 81st Cong.; amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

ADDITIONAL PAYMENTS

SEC. 8. Not to exceed 10 per centum of the sums appropriated pursuant to this Act for any fiscal year (exclusive of any sums appropriated for administration) may be used by the Secretary, under regulations prescribed by him, to make grants to local educational agencies where (1) the application of such agencies would be approved under this Act but for the agencies' inability, unless aided by such grants, to finance the non-Federal share of the cost of the projects set forth in their applications, or (2) although the applications of such agencies have been approved, the project covered by such applications could not, without such grants, be completed, because of flood, fire, or similar emergency affecting either the work on the projects or the agencies' ability to finance the non-Federal share of the cost of the projects. Such grants shall be in addition to the payments otherwise provided under this Act, shall be made to those local educational agencies whose need for additional aid is the most urgent and acute, and insofar as practicable shall be made in the same manner and upon the same terms and conditions as such other payments.

(20 U.S.C. 638) Similar provision enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 525, as Title III, sec. 308(a), P.L. 815, 81st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 552, as sec. 8 of P.L. 815, 81st Cong.; amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

WHERE EFFECT OF FEDERAL ACTIVITIES WILL BE TEMPORARY

SEC. 9. Notwithstanding the preceding provisions of this Act, whenever the Secretary determines that the membership of some or all of the children, who may be included in computing under section 5 the maximum on the total of the payments for any local educational agency, will be of temporary duration only, such membership shall not be included in computing such maximum. Instead, the Secretary may make available to such agency such temporary school facilities as may be necessary to take care of such membership; or he may, where the local educational agency gives assurance that at least minimum school facilities will be provided for such children, pay (on such terms and conditions as he deems appropriate to carry out the purposes of this Act) to such agency for use in constructing school facilities an amount equal to the amount which he estimates would be necessary to make available such temporary facilities. In no case, however, may the amount so paid exceed the cost, in the school district of such agency of constructing minimum school facilities for such children. The Secretary may transfer to such agency or its successor all the right, title, and interest of the United States in and to any temporary facilities made available to such agency under this section (or section 309 of this Act as in effect January 1, 1958); any such transfer shall be without charge, but may be made on such other terms and conditions, and at such time as the Secretary deems appropriate to carry out the purposes of this Act.

(20 U.S.C. 639) Similar provision enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 525, as Title III, sec. 309 of P.L. 815, 81st Cong. Enacted Aug 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 553, as sec. 9 of P.L. 815, 81st Cong.; amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

CHILDREN FOR WHOM LOCAL AGENCIES ARE UNABLE TO PROVIDE EDUCATION

SEC. 10. (a) In the case of children who it is estimated by the Secretary in any fiscal year will reside on Federal property at the end of the next fiscal year—

(1) if no tax revenues of the State or any political subdivision thereof may be expended for the free public education of such children; or

(2) if it is the judgment of the Secretary, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children,

the Secretary shall make arrangements for constructing, leasing, renovating, remodeling, or rehabilitating or otherwise providing the minimum school facilities necessary for the education of such children. In any case in which the Secretary makes arrangements under this section for constructing, leasing, renovating, remodeling, or rehabilitating or otherwise providing minimum school facilities situated on Federal property in Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, he may also include minimum school facilities necessary for the education of children residing with a parent employed by the United States though not residing on Federal property, but only if the Secretary determines, after consultation with the appropriate State educational agency, (1) that the construction or provision of such facilities is appropriate to carry out the purposes of this Act, (2) that no local educational agency is able to provide suitable free public education for such children, and (3) that English is not the primary language of instruction in schools in the locality. Such arrangements may also be made to provide, on a temporary basis, minimum school facilities for children of members of the Armed Forces on active duty, if the schools in which free public education is usually provided for such children are made unavailable to them as a result of official action by State or local governmental authority and it is the judgment of the Secretary, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children. To the maximum extent practicable school facilities provided under this section shall be comparable to minimum school facilities provided for children in comparable communities in the State. This section shall not apply (A) to children who reside on Federal property under the control of the Atomic Energy Commission, and (B) to Indian children attending federally operated Indian schools. Whenever it is necessary for the Secretary to provide school facilities for children residing on Federal property under this section, the membership of such children may not be included in computing under section 5 the maximum on the total of the payments for any local educational agency.

(b) When the Secretary determines it is the interest of the Federal Government to do so, he may transfer to the appropriate local educational agency all the right, title, and interest of the United States in and to any facilities provided under this section (or sections 204 or 310 of this Act as in effect January 1, 1958). Any such transfer shall be without charge, but may be on such other terms and conditions, and at such time as the Secretary deems appropriate to carry out the purposes of this Act.

(c) If no tax revenues of a State or of any political subdivision of the State may be expended for the free public education of children who reside on any Federal property within the State, or if no tax revenues of a State are allocated for the free public education of such children, then the property on which such children reside shall not be considered Federal property for the purposes of section 5 of this Act.

(20 U.S.C. 640) Similar provision enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 526, as Title III, sec. 310 of P.L. 81st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 553 as sec. 10 of P.L. 815, 81st Cong.; amended May 6, 1960, P.L. 86–449, Title V, sec. 502, 74 Stat. 89; amended July 21, 1965, P.L. 89–77, sec. 1, 79 Stat. 243; amended Nov. 3, 1966, P.L. 89–750, Title II, secs. 228, 229, 80 Stat. 1215; amended Jan. 2, 1968, P.L. 90–247, Title II, sec. 202, 81 Stat. 807; amended Nov. 1, 1978, P.L. 95–561, sec. 1023, 1031(b), 92 Stat. 2312; amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

WITHOLDING OF PAYMENTS

SEC. 11. (a) Whenever the Secretary of Education, after reasonable notice and opportunity for hearing to a local educational agency, finds (1) that there is a substantial failure to comply with the drawings and specifications for the project, (2) that any funds paid to a local educational agency under this Act have been diverted from the purposes for which paid, or (3) that any assurance given in an application is not being or cannot be carried out, the Secretary may forthwith notify such agency that no further payment will be made under this Act with respect to such agency until there is no longer any failure to comply or the diversion or default has been corrected or, if compliance or correction is impossible, until such agency repays or arranges for the repayment of Federal moneys which have been diverted or improperly expended.

(b) The final refusal of the Secretary to approve part or all of any application under this Act, and the Secretary's final action under subsection (a) of this section, shall be subject to judicial review on the record, in the United States court of appeals for the circuit in which the local educational agency is located, in accordance with the provisions of the Administrative Procedure Act.

(20 U.S.C. 641) Provision similar to subsection (a) enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 526 as Title III, sec. 311 of P.L. 815, 81st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 554 as sec. 11 of P.L. 815, 81st Cong.; amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

ADMINISTRATION

SEC. 12. [(a) Repealed.]

(b) The Secretary of Education shall administer this Act, and he may make such regulations and perform such other functions as he finds necessary to carry out the provision of this Act.

(c) The Secretary shall include in his annual report to the Congress a full report of the administration of his functions under this Act, including a detailed statement of receipts and disbursements.

(20 U.S.C. 642) Similar provision enacted Sept. 23, 1950, P.L. 815, 81st Cong., Title II, sec. 208, 64 Stat. 975. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 554, as sec. 12 of P.L. 815, 81st Cong.; subsections (a) and (d) repealed April 13, 1970, P.L. 91–230, Title IV, sec. 401 (f)(3) and (g)(4), 84 Stat. 173, 174, and superseded by secs. 422 and 423 of P.L. 90–247, as amended (20 U.S.C. 1232a, 1232b); amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

USE OF OTHER FEDERAL AGENCIES: TRANSFER AND AVAILABILITY OF APPROPRIATIONS

SEC. 13. [(a) Repealed.]

(b) All Federal departments or agencies administering Federal property on which children reside, and all such departments or agencies principally responsible for Federal activities which may give rise to a need for the construction of school facilities, shall to the maximum extent practicable, comply with requests of the Secretary for information he may require in carrying out the purposes of his Act.

(c) No appropriation to any department or agency of the United States, other than an appropriation to carry out this Act, shall be available for the same purpose as this Act; except that nothing in this subsection shall affect the availability of appropriation authorized, prior to September 23, 1950, for the construction of school facilities to be attended by Indian children, or appropriations (1) for the construction of school facilities on Federal property under the control of the Atomic Energy Commission, (2) for the construction of school facilities which are to be federally operated for Indian children, or (3) for the construction of school facilities under the Alaskan Public Works Act, approved August 24, 1949.

(20 U.S.C. 643) Similar provisions enacted Sept. 23, 1950, P.L. 815, 81st Cong., Title I, sec. 105, and Title II, sec. 209, 64 Stat. 969, 975. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 554, as sec. 13 of P.L. 815, 81st Cong.; subsection (a) repealed April 13, 1970, P.L. 91–230 Title IV sec. 401(c)(3), 84 Stat. 173, and superseded by sec. 411, P.L. 90–247, Title IV, as amended (20 U.S.C. 1231); amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

SCHOOL CONSTRUCTION ASSISTANCE IN OTHER FEDERALLY AFFECTED AREAS

SEC. 14. (a) If the Secretary determines with respect to any local educational agency that—

(1) such agency is providing or, upon completion of the school facilities for which provision is made herein, will provide free public education for children who reside on Indian lands, and whose membership in the schools of such agency has not formed and will not form the basis for payments under other provisions of this Act, and that the total number of such children represents a substantial percentage of the total number

of children for whom such agency provides free public education, or that such Indian lands constitute a substantial part of the school district of such local educational agency, or that the total number of such children who reside on Indian lands located outside the school district of such agency equals or exceeds 100;

(2) the immunity of such Indian lands to taxation by such agency has created a substantial and continuing impairment of its ability to finance needed school facilities;

(3) such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State, and other financial assistance available for the purpose; and

(4) such agency does not have sufficient funds available to it from other Federal, State, and local sources to provide the minimum school facilities required for free public education of a substantial percentage of the children in the membership of its schools,

he may provide the additional assistance necessary to enable such agency to provide such facilities, upon such terms and in such amounts (subject to the provisions of this section) as the Secretary may consider to be in the public interest; but such additional assistance may not exceed the portion of the cost of such facilities which the Secretary estimates has not been, and is not to be, recovered by the local educational agency from other sources, including payments by the United States under any other provisions of this Act or any other law. Notwithstanding the provisions of this subsection, the Secretary may waive the percentage requirement in paragraph (1) whenever, in his judgment, exceptional circumstances exist which make such action necessary to avoid inequity and avoid defeating the purposes of this section. Assistance may be furnished under this subsection without regard to paragraph (2) (but subject to the other provisions of this subsection and subsection (e)) to any local educational agency which provides free public education for children who reside on Indian lands located outside its school district. For purposes of this subsection "Indian lands" means Indian reservations or other real property referred to in the second sentence of section 15(1).

(b) If the Secretary determines with respect to any local educational agency that—

(1) such agency is providing or, upon completion of the school facilities for which provision is made herein, will provide free public education for children who reside on Indian lands, and whose membership in the schools of such agency has not formed and will not form the basis for payments under other provisions of this Act, and that the total number of such children represents a substantial percentage of the total number of children for whom such agency provides free public education, or that such Indian lands constitute a substantial part of the school district of such local educational agency, or that the total number of such children who reside on Indian lands located outside the school district of such agency equals or exceeds one hundred; and

(2) the immunity of such Indian lands to taxation by such agency has created a substantial and continuing impairment of its ability to finance needed school facilities;

he may, upon such terms and in such amounts (subject to the provisions of this section) as the Secretary may consider to be in the public interest, provide the additional assistance necessary to enable such agency to provide the minimum school facilities required for free public education of children in the membership of the schools of such agency who reside on Indian lands; but such additional assistance may not exceed the portion of the cost of constructing such facilities which the Secretary estimates has not been, and is not to be, recovered by the local educational agency from other sources, including payments by the United States under any other provisions of this Act or any other law. Notwithstanding the provisions of this subsection, the Secretary may waive the percentage requirement in paragraph (1) whenever, in his judgment, exceptional circumstances exist which make such action necessary to avoid inequity and avoid defeating the purposes of this section. Assistance may be furnished under this subsection without regard to paragraph (2) (but subject to the other provisions of this subsection and subsection (e)[1] to any local educational agency which provides free public education for children who reside on Indian lands located outside its school district. For purposes of this subsection "Indian lands" means Indian reservations or other real property referred to in the second sentence of section 15(1).

(c) If the Secretary determines with respect to any local educational agency—

(1) that (A) such agency is providing or, upon completion of the school facilities for which provision is made herein, will provide, free public education for children who are inadequately housed by minimum school facilities and whose membership in the schools of such agency has not formed and will not form the basis for payments under other provisions of this Act, and (B) the total number of such children represents a substantial percentage of the total number of children for whom such agency provides free public education, and (C) Federal property constitutes a substantial part of the school district of such agency,

(2) that the immunity of such Federal property from taxation by such agency has created a substantial and continuing impairment of such agency's ability to finance needed school facilities,

(3) that such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance for the purpose, and

(4) that such agency does not have sufficient funds available to it from other Federal, State, and local sources to provide the minimum school facilities required for free public education of a substantial percentage of the children in the membership of its schools,

he may provide the assistance necessary to enable such agency to provide minimum school facilities for children in the membership of the schools of such agency whom the Secretary finds to be inadequately housed, upon such terms and conditions, and in such amounts (subject to the applicable provisions of this section) as the Secretary may consider to be in the public interest. Such assistance may not exceed the portion of the cost of such facilities which the Secretary estimates has not been, and is not to be, recovered by the local educational agency from other sources, including payments by the United States under any other provisions of this Act or any other law. Notwithstanding the provisions of this subsection, the Secretary may waive the percentage requirement in paragraph (1) whenever, in his judgment, exceptional circumstances exist which make such action necessary to avoid inequity and avoid defeating the purposes of this subsection.

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[1] So in original. Probably should be followed by a closing parenthesis.

(d) There are hereby authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section. There are also authorized to be appropriated such sums as may be necessary for administration of such provisions. Amounts so appropriated, other than amounts appropriated for administration, shall remain available until expended.

(e) No payment may be made to any local educational agency under subsection (a) or (b) except upon application therefor which is submitted through the appropriate State educational agency and is filed with the Secretary in accordance with regulations prescribed by him, and which meets the requirements of section 6(b)(1). In determining the order in which such applications shall be approved, the Secretary shall consider the relative educational and financial needs of the local educational agencies which have submitted approvable applications and the nature and extent of the Federal responsibility. No payment may be made under subsection (a) or (b) unless the Secretary finds, after consultation with the State and local educational agencies, that the project or projects with respect to which it is made are not inconsistent with overall State plans for the construction of school facilities. All determinations made by the Secretary under this section shall be made only after consultation with the appropriate State educational agency and the local educational agency.

(f) Amounts paid by the Secretary to local educational agencies under subsection (a) or (b) may be paid in advance of, or by way of reimbursement for, work performed or purchases made pursuant to the agreement with the Secretary under this section, and may be paid in such installments as the Secretary may determine. Any funds paid to a local educational agency and not expended or otherwise used for the purposes for which paid shall be repaid to the Treasury of the United States.

(g) None of the provisions of sections 1 to 10, both inclusive, other than section 6(b)(1), shall apply with respect to determinations made under this section.

(h) It is hereby declared to be the policy of the Congress that the provision of assistance pursuant to subsections (a) and (b) of this section shall be given a priority at least equal to that given to payments made pursuant to section 10 of this Act.

(20 U.S.C. 644) Similar provisions enacted Aug. 8, 1953, P.L. 246, 83d Cong., sec. 1, 67 Stat. 526, as Title IV, sec. 401 of P.L. 815, 81st Cong. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 555, as sec. 14 of P.L. 815, 81st Cong.; amended Oct. 3, 1961, P.L. 87–344, Title I, sec. 101(b), 75 Stat. 759; amended Dec. 18, 1963, P.L. 88–210, Title I, sec. 301(b), formerly sec. 31(b), 77 Stat. 419; amended Oct. 16, 1964, P.L. 88–665, Title XI, sec. 1101(b), 78 Stat. 1109; amended Nov. 3, 1966, P.L. 89–750, Title II, sec. 225, 80 Stat. 1214; amended Jan. 2, 1968, P.L. 90–247, Title II, sec. 203, 81 Stat. 807; redesignated Oct. 16, 1968, P.L. 90–576, Title I, sec. 101(a)(1), 82 Stat. 1064; amended April 13, 1970, P.L. 91–230, Title II, secs. 205(a) and 206, 84 Stat. 158, 159; amended April 28, 1988, P.L. 100–297, secs. 2032, 2034, 102 Stat. 301.

DEFINITIONS

SEC. 15. For the purposes of this Act—

(1) The term "Federal property" means real property which is owned by the United States or is leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. Except for the purposes of section 10, such term includes (A) real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States, any low-rent housing (whether or not owned by the United States) which is part of a low-rent housing project assisted under the United States Housing Act of 1937, and (C) any school which is providing flight training to members of the Air Force under contractual arrangements with the Department of the Air Force at an airport which is owned by a State or a political subdivision of a State. Such term also includes any interest in Federal property (as defined in the foregoing provisions of this paragraph) under an easement, lease, license, permit, or other arrangement, as well as any improvements of any nature (other than pipelines or utility lines) on such property even though such interests or improvements are subject to taxation by a State or political subdivision of a State or by the District of Columbia. Notwithstanding the foregoing provisions of this paragraph, such term does not include (A) any real property used for a labor supply center, labor home, or labor camp for migratory farm workers and (B) any real property under the jurisdiction of the Post Office Department and used primarily for the provision of postal services.

(2) The term "child" means any child who is within the age limits for which the applicable State provides free public education.

(3) The term "parent" includes a legal guardian or other person standing in loco parentis.

(4) The term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State.

(5) The membership of schools shall be determined in accordance with State law or, in the absence of State law governing such a determination, in accordance with regulations of the Secretary; except that, notwithstanding any other provision of this Act, where the local educational agency of the school district in which any

child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this Act the membership of such child shall be held and considered—

(A) if the two local educational agencies concerned so agree, and if such agreement is approved by the Secretary, as membership of a school of the local educational agency receiving such tuition payment;

(B) in the absence of any such approved agreement, as membership of a school of the local educational agency so making or contracting to make such tuition payment.

In any determination of membership of schools, children who are not provided free public education (as defined in paragraph (4)) shall not be counted.

(6) The average per pupil cost of constructing minimum school facilities in the State in which the school district of a local educational agency is situated shall be determined by the Secretary of Education on the basis of the contract cost per square foot under contracts for the construction of school facilities (exclusive of costs of site improvements, equipment, and architectural, engineering, and legal fees) entered into in the State for the second year of the four year increase period designated in the application, increased by a percentage estimated by the Secretary to represent additional costs for site improvements, equipment, and architectural, engineering, and legal fees, and multiplied by a factor estimated by the Secretary to represent the area needed per pupil in minimum school facilities. If the Secretary finds that the information available for the State concerned for such preceding fiscal year is inadequate or not sufficiently representative, he shall determine such cost on the basis of such information as he has available and after consultation with the State educational agency. The cost of constructing minimum school facilities in the school district of a local educational agency shall be determined by the Secretary, after consultation with the State and local educational agencies, on the basis of such information as may be contained in the application of such local educational agency and such other information as he may obtain.

(7) Estimates of membership, and all other determinations with respect to eligibility and maximum amount of payment, shall be made as of the time of the approval of the application for which made, and shall be made on the basis of the best information available at the time of such approval.

(8) The terms "construct", "constructing", and "construction" include the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

(9) The term "school facilities" includes classrooms and related facilities; and initial equipment, machinery, and utilities necessary or appropriate for school purposes. Such term does not include athletic stadiums, or structures or facilities intended primarily for athletic exhibitions, contests, or games or other events for which admission is to be charged to the general public. Except as used in

section 9 and 10, such term does not include interests in land and off-site improvements.

(10) Whether or not school facilities are minimum school facilities shall be determined by the Secretary, after consultation with the State and local educational agencies, in accordance with regulations prescribed by him. Such regulations shall (A) require the local educational agency concerned to give due consideration to excellence of architecture and design, (B) provide that no facility shall be disqualified as a minimum school facility because of the inclusion of works of art in the plans therefor if the cost of such works of art does not exceed 1 per centum of the cost of the project, and (C) require compliance with such standards as the Secretary may prescribe or approve in order to insure that facilities constructed with the use of Federal funds under this Act shall be, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by handicapped persons.

(11) The term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public education or which has responsibility for the provision of such facilities.

(12) The term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

(13) The term "State" means a State, Puerto Rico, Guam, the District of Columbia, American Samoa, the Northern Mariana Islands, the Virgin Islands, or Wake Island.

(14) The term "Secretary" means the Secretary of Education.

(15) The term "base year" means the third or fourth regular school year preceding the fiscal year in which an application was filed under this Act, as may be designated in the application, except that in the case of an application based on children referred to in paragraph (2) or (3) of section 5(a), the base year shall in no event be later than the regular school year 1988–1989; and

(16) The term "increase period" means the period of four consecutive regular school years immediately following such base year.

(20 U.S.C. 645) Similar provisions enacted Sept. 23, 1950, P.L. 815, 81st Cong., Title II, sec. 210, 64 Stat. 976. Enacted Aug. 12, 1958, P.L. 85–620, Title I, sec. 101, 72 Stat. 556, as sec. 15 of P.L. 815, 81st Cong.; amended June 25, 1959, P.L. 86–70, sec. 18(c), 73 Stat. 144; amended July 12, 1960, P.L. 86–624, sec. 14(c), 74 Stat. 414; amended Oct. 3, 1961, P.L. 87–344, Title I, sec. 101 (c), 75 Stat. 759; amended Dec. 18, 1963, P.L. 88–210, Title III, sec. 301(c), formerly sec. 31(c), 77 Stat. 419; amended Oct. 16, 1964, P.L. 88–665, Title XI, sec. 1101 (c), (d), 78 Stat. 1109; amended Nov. 3, 1966, P.L. 89–750, Title II, secs. 222 (b), (c), (d), 230–232, 80 Stat. 1213–1216; amended Jan. 2, 1968, P.L. 90–247, Titles II, III, secs. 201, 301(d)(2) 81 Stat. 806, 813; redesignated Oct. 16, 1968, P.L. 90–576, Title I, sec. 101(a)(1), 82 Stat. 1064; amended April 13, 1970, P.L. 91–230, Title II, secs. 201(a)(2), 203(a)(1)(2), 84 Stat. 154, 155; amended August 21, 1974, P.L. 93–380, sec. 301(a)(2), 88 Stat. 521; amended Nov. 1, 1978, P.L. 95–561, sec. 1021(b), 1031(b), 92 Stat. 2312; amended April 28, 1988, P.L. 100–297, secs. 2031, 2032, 102 Stat. 301.

SCHOOL CONSTRUCTION ASSISTANCE IN CASES OF CERTAIN DISASTERS

SEC. 16.[1] (a) In any case in which—

(1) the Director of the Office of Emergency Planning determines with respect to any local educational agency (including for the purpose of this section any other public agency which operates schools providing technical, vocational, or other special education to children of elementary or secondary school age) that such agency is located in whole or in part within an area which, after August 30, 1965, and prior to October 1, 1993, has suffered a major disaster as the result of any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which, in the determination of the President pursuant to sections 102(2) and 301 of the Disaster Relief Act of 1974[2], is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government; and

(2) the Governor of the State in which such agency is located has certified the need for disaster assistance under this section, and has given assurance of expenditure of a reasonable amount of the funds of the government of such State, or of any political subdivision thereof, for the same or similar purposes with respect to such catastrophe;

and if the Secretary determines with respect to such agency that—

(3) as a result of such major disaster, (A) public elementary or secondary school facilities of such agency (or, in the case of a public agency other than a local educational agency, school facilities providing technical, vocational, or other special education to children of elementary or secondary school age) have been destroyed or seriously damaged, or (B) private elementary or secondary school facilities serving children who reside in the area served by such agency have been destroyed and will not be replaced, thereby increasing the need of such agency for school facilities;

(4) such agency is utilizing or will utilize all State and other financial assistance available for the replacement or restoration of such school facilities;

(5) such agency does not have sufficient funds available to it from State, local, and other Federal sources (including funds available under other provisions of this Act), and from the proceeds of insurance on such school facilities, and required an amount of additional assistance equal to at least $10,000 or 5

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[1] Section 306 of Public Law 101–517 provides as follows:

IMPACT AID

SEC. 306. Notwithstanding any other provision of law, in carrying out the provisions of section 7 of Public Law 81–874 (20 U.S.C. 241–1) (as amended) and section 16 of Public Law 81–815 (20 U.S.C. 646) (as amended), the Secretary of Education shall reduce or waive the administrative guideline of a 25 percent non-Federal share upon a showing of—

(1) financial hardship by the State or political subdivision thereof in the provision of; or

(2) a good faith effort by the State or political subdivision thereof to provide;

the non-Federal share for purposes related to the disaster for which Federal assistance is sought.

This title may be cited as the "Department of Education Appropriations Act, 1991".

Public Law 101–517 is an appropriations Act, so section 306 probably applies only to fiscal year 1991.

[2] Probably should read "102(2) and 401 of the Disaster Relief and Emergency Assistance Act". The amendment made by section 109(j) of Public Law 100–707, 102 Stat. 4709, probably should have been made to section 7(a)(1) rather than 7(a)(1)(A).

per centum of such agency's current operating expenditures during the fiscal year preceding the one in which such disaster occurred, whichever is less, to provide the minimum school facilities needed (A) for the restoration or replacement of the school facilities of such agency so destroyed or seriously damaged or (B) to serve, in facilities of such agency, children who but for the destruction of the private facilities referred to in clause (3)(B) would be served by such private facilities; and

(6) in the case of any such major disaster, to the extent that the operation of private elementary and secondary schools in the school attendance area of the local educational agency has been disrupted or impaired by such disaster, such local educational agency has complied with the provisions of section 7(a)(4) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), with respect to provisions for the conduct of educational programs under public auspices and administration in which children enrolled in such private elementary and secondary schools may attend and participate,

the Secretary may provide the additional assistance necessary to enable such agency to provide such facilities, upon such terms and in such amounts (subject to the provisions of this section) as the Secretary may consider to be in the public interest; but such additional assistance, plus the amount which he determines to be available from State, local, and other Federal sources (including funds available under other provisions of this Act), and from the proceeds of insurance, may not exceed the cost of construction incident to the restoration or replacement of the school facilities destroyed or damaged as a result of the disaster. For the purpose of the preceding sentence, the phrase "cost of construction incident to the restoration or replacement of the school facilities" includes such additional amounts as the Secretary may approve in order to assure that the facilities, as restored or replaced, will afford appropriate protection against personal injuries resulting from a disaster.

(b) There are hereby authorized to be appropriated for each fiscal year such amounts as may be necessary to carry out the provisions of this section. Pending such appropriation, the Secretary may expend (without regard subsections (a) and (e) of section 3679 of the Revised Statutes (31 U.S.C. 665)) from any funds heretofore or hereafter appropriated for expenditure in accordance with other sections of this Act such sums as may be necessary for immediately providing assistance under this section, such appropriations to be reimbursed from the appropriations authorized by this subsection when made.

(c) No payment may be made to any local educational agency under subsection (a) except upon application therefor which is submitted through the appropriate State educational agency and is filed with the Secretary in accordance with regulations prescribed by him, and which meets the requirements of section 6(b)(1). In determining the order in which such applications shall be approved, the Secretary shall consider the relative educational and financial needs of the local educational agencies which have submitted approvable applications. No payment may be made under subsection (a) unless the Secretary finds, after consultation with the State and local educational agencies, that the project or projects with respect to which it is made are not inconsistent with overall State plans for the construction of school facilities. All determinations made by the Secretary under this section shall be made only after consultation with the appropriate State educational agency and the local educational agency. The Secretary shall complete action of approval or disapproval of an application within 90 days of the filing of an application.

(d) Amounts paid by the Secretary to local educational agencies under subsection (a) may be paid in advance or by way of reimbursement and in such installments as the Secretary may determine. Any funds paid to a local educational agency and not expended or otherwise used for the purposes for which paid shall be repaid to the Treasury of the United States.

(e) None of the provisions of sections 1 to 10, both inclusive, other than section 6(b)(1), shall apply with respect to this section.

(20 U.S.C. 646) Enacted Nov. 1, 1965, P.L. 89–313, sec. 1, 79 Stat. 1158; amended Jan. 2, 1968, P.L. 90–247, Title II, sec. 217, 81 Stat. 810; amended April 13, 1970, P.L. 91–230, Title II, sec. 201(c), 84 Stat. 154; amended May 22, 1974, P.L. 93–288, title VI, sec. 602(f), 88 Stat. 164; amended August 21, 1974, P.L. 93–380, sec. 301(b), 88 Stat. 521; amended August 21, 1974, P.L. 93–380, sec. 302(b), 88 Stat. 522; amended April 21, 1976, P.L. 94–273, sec. 3(6), 90 Stat. 376; amended Nov. 1, 1978, P.L. 95–561, sec. 1010(b), 1024, 92 Stat. 2310–2312; amended Oct. 19, 1984, P.L. 98–511, sec. 301(b), 98 Stat. 2388; amended April 28, 1988, P.L. 100–297, 2031–2033, 102 Stat. 301.

SPECIAL BASE CLOSING PROVISION

SEC. 17. In determining the payment to be made to a local educational agency under this Act the Secretary shall disregard the announcement, made November 19, 1964, of a decrease in or cessation of Federal activities in certain areas, and shall carry out such Act as if such announcement had not been made.

(20 U.S.C. 647) Enacted Nov. 1, 1965, P.L. 89–313, sec. 3, 79 Stat. 1161; amended April 28, 1988, P.L. 100–297, sec. 2032, 102 Stat. 301.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

PART II—EDUCATION AND TRAINING OF INDIVIDUALS WITH DISABILITIES

INDIVIDUALS WITH DISABILITIES EDUCATION ACT[1]

PART A—GENERAL PROVISIONS

SHORT TITLE; STATEMENT OF FINDINGS AND PURPOSE

SEC. 601. (a) This title may be cited as the "Individuals with Disabilities Education Act".

(b) The Congress finds that—

(1) there are more than eight million children with disabilities in the United States today;

(2) the special educational needs of such children are not being fully met;

(3) more than half of the children with disabilities in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

(4) one million of the children with disabilities in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

(5) there are many children with disabilities throughout the United States participating in regular school programs whose disabilities prevent them from having a successful educational experience because their disabilities are undetected;

(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special

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[1] The short title of this title formerly was the "Education of the Handicapped Act". P.L. 101–476, sec. 901, 104 Stat. 1141, changed the short title to the "Individuals with Disabilities Education Act". After making this change, section 901 provided for conforming amendments to the "Education for the Handicapped Act". The conforming amendments have been executed to the Individuals with Disabilities Education Act to effectuate the probable intent of the Congress. Section 901 further made conforming changes to certain other Acts. In the case of Acts to which such amendments were not made, and in the case of any regulation, section 901 provided that any reference to the Education of the Handicapped Act shall be considered to be a reference to the Individuals with Disabilities Education Act.

This title is title VI of P.L. 91–230, which was enacted April 13, 1970. Section 662 of that Public Law provided for the repeal of title VI of the Elementary and Secondary Education Act of 1965, which concerned the education of handicapped children. (P.L. 89–750 had added that title.) This repeal was effective July 1, 1971. Also repealed as of that date were the following: P.L. 90–538, Handicapped Children's Early Education Assistance Act; P.L. 85–926, Grants for Teaching in the Education of Handicapped Children; P.L. 88–164, titles III and V of the Mental Retardation Facilities and Community Mental Centers Construction Act of 1963; and P.L. 85–905, Instructional Media for Handicapped Children.

education and related services to meet the needs of children with disabilities;

(8) State and local educational agencies have a responsibility to provide education for all children with disabilities, but present financial resources are inadequate to meet the special educational needs of children with disabilities; and

(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of children with disabilities in order to assure equal protection of the law.

(c) It is the purpose of this Act to assure that all children with disabilities have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities.

(20 U.S.C. 1400) Enacted November 29, 1975 P.L. 94–142, sec. 3, 89 Stat. 774, 775; amended October 30, 1990, P.L. 101–476, sec. 901(a)(1), (b) (1)–(9), 104 Stat. 1141–42.

DEFINITIONS

SEC. 602. (a) As used in this title—

(1)(A) The term "children with disabilities" means children—

(i) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, need special education and related services.

(B) The term "children with disabilities" for children aged 3 to 5, inclusive, may, at a State's discretion, include children—

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) who, by reason thereof, need special education and related services.

(2)[1]

(4) The term "construction", except where otherwise specified, means (A) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any

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[1] P.L. 98–199, sec. 2(2), repealed this paragraph which defined the term "Commissioner". That law further amended this Act by replacing all references to "Commissioner" or "Commissioner's" with "Secretary" or "Secretary's", respectively. (97 Stat. 1358)

agency or institution making application for assistance under this title; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

(5) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

(6) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.[1]

(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(8) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function, for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(11) The term "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

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[1] Section 802(d)(1) of Public Law 102–73 amended section 602(a)(6) of the Education of the Handicapped Act by striking "or the Trust Territory of the Pacific Islands" and inserting "or Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658)". The amendment probably should have been made to the Individuals With Disabilities Education Act.

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: 3Provided, however, That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of education or training offered.

The term includes community colleges receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.

(12) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of children with disabilities, or the dissemination of in-

formation derived therefrom, including (but without limitation) experimental schools.

(14) The term "Secretary" means the Secretary of Education.

(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including—

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(18) The term "free appropriate public education" means special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge,

(B) meet the standards of the State educational agency,

(C) include an appropriate preschool, elementary, or secondary school education in the State involved, and

(D) are provided in conformity with the individualized education program required under section 614(a)(5).

(19) The term "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the

development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(20) The term "individualized education program" means a written statement for each child with a disability developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include—

(A) a statement of the present levels of educational performance of such child,

(B) a statement of annual goals, including short-term instructional objectives,

(C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs,

(D) a statement of the needed transition services for students beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the interagency reponsibilities or linkages (or both) before the student leaves the school setting,

(E) the projected date for initiation and anticipated duration of such services, and

(F) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

In the case where a participating agency, other than the educational agency, fails to provide agreed upon services, the educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives.

(21) The term "excess costs" means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting—

(A) amounts received—

(i) under this part,

(ii) under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, or

(iii) under title VII of the Elementary and Secondary Education Act of 1965, and

(B) any State or local funds expended for programs that would qualify for assistance under such part, chapter, or title.

(22) The term "native language" has the meaning given that term by section 7003(a)(2) of the Bilingual Education Act.

(23) The term "intermediate educational unit" means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency,

which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to children with disabilities within that State.

(24)(A) The term "public or private nonprofit agency or organization" includes an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior (when acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of the Interior.

(B) The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe.

(C) The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

(25) The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(26) The term "assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) the evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

(27) The term "underrepresented" means populations such as minorities, the poor, the limited English proficient, and individuals with disabilities.

(b) For purposes of part C of this title, "youth with a disability" means any child with a disability (as defined in subsection (a)(1)) who—

(1) is twelve years of age or older; or

(2) is enrolled in the seventh or higher grade in school.

(20 U.S.C. 1401) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 602, 84 Stat. 175, amended November 29, 1975, P.L. 94-142, sec. 4(a), 89 Stat. 775, 776; amended December 2, 1983, P.L. 98-199, sec. 2, 97 Stat. 1357; amended October 8, 1986, P.L. 99-457, sec. 402, 100 Stat. 1172; amended November 7, 1988, P.L. 100-630, sec. 101(a), 102 Stat. 3289; amended October 30, 1990, P.L. 101-476, secs. 101 and 901(b)(10)-(20), 104 Stat. 1103-05, 1142-43; amended October 7, 1991, P.L. 102-119, secs. 3 and 25(a)(1), 105 Stat. 587 and 605.

OFFICE OF SPECIAL EDUCATION PROGRAMS

SEC. 603. (a) There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs which shall be the principal agency in the Department for administering and carrying out this Act and other programs and activities concerning the education and training of individuals with disabilities.

(b)(1) The Office established under subsection (a) shall be headed by a Deputy Assistant Secretary who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services. The position of Deputy Assistant Secretary shall be in grade GS-18 of the General Schedule under section 5104 of title 5, United States Code, and shall be a Senior Executive Service position for the purposes of section 3132(a)(2) of such title.

(2) In addition to such Deputy Assistant Secretary, there shall be established in such office not less than six positions for persons to assist the Deputy Assistant Secretary, including the position of Associate Deputy Assistant Secretary. Each such position shall be in grade GS-15 of the General Schedule under section 5104 of title 5, United States Code.

(20 U.S.C. 1402) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 603, 84 Stat. 177; amended August 21, 1974, P.L. 93-380, sec. 612(a), 88 Stat. 579, 580; amended December 2, 1983, P.L. 98-199, sec. 3(a), 97 Stat. 1359; amended October 30, 1990, P.L. 101-476, sec. 901(b)(21), 104 Stat. 1143.

ABROGATION OF STATE SOVEREIGN IMMUNITY

SEC. 604. (a) A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

(b) In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public entity other than a State.

(c) The provisions of subsections (a) and (b) shall take effect with respect to violations that occur in whole or part after the date of the enactment of the Education of the Handicapped Act Amendments of 1990.

(20 U.S.C. 1403) Enacted October 30, 1990, P.L. 101–476, sec. 103, 104 Stat. 1106.

ACQUISITION OF EQUIPMENT AND CONSTRUCTION OF NECESSARY FACILITIES

SEC. 605. (a) In the case of any program authorized by this title, if the Secretary determines that such program will be improved by permitting the funds authorized for such program to be used for the acquisition of equipment and the construction of necessary facilities, the Secretary may authorize the use of such funds for such purposes.

(b) If, within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this title, the facility constructed ceases to be used for the purposes for which it was constructed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

(20 U.S.C. 1404) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 605, 84 Stat. 177; amended November 7, 1988, P.L. 100–630, sec. 101(b), 102 Stat. 3290; amended October 7, 1991, P.L. 102–119, sec. 25(a)(2), 105 Stat. 605.

EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

SEC. 606. The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

(20 U.S.C. 1405) Enacted November 29, 1975, P.L. 94–142, sec. 6(a), 89 Stat. 795; amended October 30, 1990, P.L. 101–476, sec. 901(b) (22) and (23), 104 Stat. 1143.

GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

SEC. 607. (a) The Secretary is authorized to make grants and to enter into cooperative agreements with the Secretary of the Interior and with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act entitled "An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved August 12, 1968.

(b) For the purposes of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

(20 U.S.C. 1406) Enacted November 29, 1975, P.L. 94–142, sec. 6(a), 89 Stat. 795; amended December 2, 1983, P.L. 98–199, sec. 5, 97 Stat. 1358; amended October

8, 1986, P.L. 99–457, sec. 401, 100 Stat. 1172; amended November 7, 1988, P.L. 100–630, sec. 101(c), 102 Stat. 3290.

REQUIREMENTS FOR PRESCRIBING REGULATIONS

SEC. 608. (a) For purposes of complying with section 431(b) of the General Education Provisions Act with respect to regulations promulgated under part B of this Act, the thirty-day period under such section shall be ninety days.

(b) The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act which would procedurally or substantively lessen the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

(20 U.S.C. 1407) Enacted December 2, 1983, P.L. 98–199, sec. 6, 97 Stat. 1359; amended November 7, 1988, P.L. 100–630, sec. 101(d), 102 Stat. 3290; amended October 30, 1990, P.L. 101–476, sec. 901(b)(24), 104 Stat. 1143.

ELIGIBILITY FOR FINANCIAL ASSISTANCE

SEC. 609. Effective for fiscal years for which the Secretary may make grants under section 619(b)(1), no State or local educational agency or intermediate educational unit or other public institution or agency may receive a grant under parts C through G which relate exclusively to programs, projects, and activities pertaining to children aged three to five, inclusive, unless the State is eligible to receive a grant under section 619(b)(1).

(20 U.S.C. 1408) Enacted October 8, 1986, P.L. 99–457, sec. 202, 100 Stat. 1158.

ADMINISTRATIVE PROVISIONS APPLICABLE TO PARTS C THROUGH G AND SECTION 618

SEC. 610. (a) The Secretary shall maintain a process for developing a program plan for the implementation of each of the programs authorized under section 618 and parts C through G. The plan shall include program goals, objectives, strategies, and priorities. In conducting the process, the Secretary shall involve individuals with disabilities, parents, professionals, and representatives of State and local educational agencies, private schools, institutions of higher education, and national organizations who have interest and expertise in the program.

(b) In awarding grants, contracts, and cooperative agreements under parts C through G, the Secretary, where appropriate, shall require applicants to demonstrate how they will address, in whole or in part, the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds.

(c) In awarding grants, contracts, or cooperative agreements under parts C through G the Secretary, where appropriate, may require applicants to address the various transitions that a child with a disability may face throughout such child's years in school, including—

(1) the transition from medical care to special education for those children with disabilities, including chronic health impairments, who may require individualized health-related services to enable such children to participate in, or benefit from, special education;

(2) the transition between residential placement and community-based special education services; and

(3) the transition between a separate educational placement and the regular classroom setting.

(d) The Secretary shall conduct directly, or by contract or cooperative agreement with appropriate entities, independent evaluations of the programs authorized under section 618 and under parts C through G, and may for such purpose use funds appropriated to carry out such provisions. The findings of the evaluators shall be utilized in the planning process under subsection (a) for the purpose of improving the programs. The evaluations shall determine the degree to which the program is being conducted consistent with the program plan and meeting its goals and objectives. The Secretary shall submit to the appropriate committees of the Congress the results of the evaluations required by this subsection.

(e) The Secretary shall report on the program plans required in subsection (a) and findings from the evaluations under subsection (d) in the annual report to the Congress required under section 618.

(f) The Secretary shall develop effective procedures for acquiring and disseminating information derived from programs and projects funded under parts C through G, as well as information generated from studies conducted and data collected under section 618.

(g) The Secretary shall, where appropriate, require recipients of all grants, contracts, and cooperative agreements under parts C through G to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Programs (TAPP) assisted under parts C and D, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(h)(1) The Secretary shall convene, in accordance with paragraph (2), panels of experts who are competent, by virtue of their training or experience, to evaluate proposals under section 618 and parts C through G.

(2) Panels under paragraph (1) shall be composed of individuals with disabilities, parents of such individuals, individuals from the fields of special education, related services, and other relevant disciplines.

(3) The Secretary shall convene panels under paragraph (1) for any application that includes a total funding request exceeding

$60,000 and may convene or otherwise appoint panels for applications that include funding requests that are less than such amount.

(4) Panels under paragraph (1) shall include a majority of non-Federal members. Such non-Federal members shall be provided travel and per diem not to exceed the rate provided to other educational consultants used by the Department of Education and shall be provided consultant fees at such a rate.

(5) The Secretary may use funds available under section 618 and parts C through G to pay expenses and fees of non-Federal members of the panels.

(i) The Secretary shall conduct at least 1 site visit for each grant, contract, and cooperative agreement receiving $300,000 or more annually under parts C through G.

(j)(1) With respect to the discretionary programs authorized by parts C through G, the Congress finds as follows:

(A)(i) The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

(ii) America's racial profile is rapidly changing. While the rate of increase for white Americans is 3.2 percent, the rate of increase for racial and ethnic minorities is much higher: 38.6 percent for Hispanics, 14.6 percent for African-Americans, and 40.1 percent for Asians and other ethnic groups.

(iii) By the year 2000, this Nation will have 260,000,000 people, one of every three of whom will be either African-American, Hispanic, or Asian-American.

(iv) Taken together as a group, it is a more frequent phenomenon for minorities to comprise the majority of public school students. Large city school populations are overwhelmingly minority, e.g., Miami, 71 percent; Philadelphia, 73 percent; Baltimore, 80 percent.

(v) Recruitment efforts within special education at the level of preservice, continuing education, and practice must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

(vi) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts, limited-English students make up almost half of all students initially entering school at the kindergarten level. Studies have documented apparent discrepancies in the levels of referral and placement of limited-English proficient children in special education. The Department of Education has found that services provided to limited-English proficient students often do not respond primarily to the pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.

(B)(i) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

(ii) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

(iii) Poor African-American children are 3.5 times more likely to be identified by their teacher as mentally retarded than their white counterpart.

(iv) Although African-Americans represent 12 percent of elementary and secondary enrollments, they constitute 28 percent of total enrollments in special education.

(v) The drop out rate is 68 percent higher for minorities than for whites.

(vi) More than 50 percent of minority students in large cities drop out of school.

(C)(i) The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this Act; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically Black colleges and universities is essential if we are to obtain greater success in the education of minority children with disabilities.

(ii) In 1989, of the 661,000 college and university professors, 4.6 percent were African-American and 3.1 percent were Hispanic. Of the 3,600,000 teachers, prekindergarten through high school, 9.4 percent were African-American and 3.9 percent were Hispanic.

(iii) Students from minority groups comprise more than 50 percent of K–12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.

(iv) As the number of African-American and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.

(v) Ten years ago, 12.5 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21.3 percent of the national population at that time and were clearly underrepresented then among employed teachers. Today, the elementary and secondary teaching force is 3 to 5 percent minority, while one-third of the students in public schools are minority children.

(vi) As recently as 1984–85, Historically Black Colleges and Universities (HBCUs) supplied nearly half of the African-American teachers in the Nation. However, in 1988, HBCUs received only 2 percent of the discretionary funds for special education and related services personnel training.

(vii) While African-American students constitute 28 percent of total enrollment in special education, only 11.2 percent of individuals enrolled in preservice training programs for special education are African-American.

(viii) In 1986–87, of the degrees conferred in education at the B.A., M.A., and Ph.D levels, only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic students.

(D) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the private sector that impede their full participation in the mainstream of society.

(2) The Congress further finds that these conditions can be greatly improved by providing opportunities for the full participation of minorities through the implementation of the following recommendations:

(A) Implementation of a policy to mobilize the Nation's resources to prepare minorities for careers in special education and related services.

(B) This policy should focus on—

(i) the recruitment of minorities into teaching; and

(ii) financially assisting HBCUs and other institutions of higher education (whose minority student enrollment is at least 25 percent) to prepare students for special education and related service careers.

(C)(i) The Secretary shall develop a plan for providing outreach services to the entities described in clause (ii) in order to increase the participation of such entities in competitions for grants, contracts, and cooperative agreements under any of parts C through G.

(ii) The entities referred to in clause (i) are—

(I) Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent;

(II) eligible institutions as defined in section 312 of the Higher Education Act of 1965;

(III) nonprofit and for-profit agencies at least 51 percent owned or controlled by one or more minority individuals; and

(IV) underrepresented populations.

(iii) For the purpose of implementing the plan required in clause (i), the Secretary shall, for each of the fiscal years 1991 through 1994, expend 1 percent of the funds appropriated for the fiscal year involved for carrying out parts C through G.

(3) The Secretary shall exercise his/her utmost authority, resourcefulness, and diligence to meet the requirements of this subsection.

(4) Not later than January 31 of each year, starting with fiscal year 1991, the Secretary shall submit to Congress a final report on the progress toward meeting the goals of this subsection during the preceding fiscal year. The report shall include—

(i) a full explanation of any progress toward meeting the goals of this subsection; and

(ii) a plan to meet the goals, if necessary.

(20 U.S.C. 1409) Enacted October 30, 1990, P.L. 101–476, sec. 104, 104 Stat. 1106–1110.

PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

SETTLEMENTS AND ALLOCATIONS

SEC. 611. (a)(1) Except as provided in paragraph (5) and in section 619, the maximum amount of the grant to which a State is entitled under this part for any fiscal year shall be equal to—

(A) the number of children with disabilities aged 3–5, inclusive, in a State who are receiving special education and related services as determined under paragraph (3) if the State is eligible for a grant under section 619 and the number of children with disabilities aged 6–21, inclusive, in a State who are receiving special education and related services as so determined;

multiplied by—

(B)(i) 5 per centum, for the fiscal year ending September 30, 1978, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(ii) 10 per centum, for the fiscal year ending September 30, 1979, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iii) 20 per centum, for the fiscal year ending September 30, 1980, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iv) 30 per centum, for the fiscal year ending September 30, 1981, of the average per pupil expenditure in public elementary and secondary schools in the United States; and

(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States;

except that no State shall receive an amount which is less than the amount which such State received under this part for the fiscal year ending September 30, 1977.

(2) For the purpose of this subsection and subsection (b) through subsection (e), the term "State" does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.[1]

(3) The number of children with disabilities receiving special education and related services in any fiscal year shall be equal to the number of such children receiving special education and related services on December 1 of the fiscal year preceding the fiscal year for which the determination is made.

(4) For purposes of paragraph (1)(B), the term "average per pupil expen during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case manditure", in the United States, means the aggregate current ex-

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[1] Section 802(d)(2) of Public Law 102–73 amended section 611(a)(2) of the Education of the Handicapped Act by striking "and the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau". The amendment probably should have been made to the Individuals With Disabilities Education Act.

penditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, they be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

(5)(A) In determining the allotment of each State under paragraph (1), the Secretary may not count—

(i) children with disabilities aged three to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged three to seventeen, inclusive, in such State and the State serves all children with disabilities aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court,

(ii) children with disabilities aged five to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged five to seventeen, inclusive, in such State and the State does not serve all children with disabilities aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court; and

(iii) children with disabilities who are counted under subpart 2 of part D of chapter 1 of title 1 of the Elementary and Secondary Education Act of 1965.

(B) For purposes of subparagraph (A), the number of children aged three to seventeen, inclusive, in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.

(b)(1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1978—

(A) 50 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) 50 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with the priorities established under section 612(3).

(2) Of the funds which any State may use under paragraph (1)(A)—

(A) an amount which is equal to the greater of—

(i) 5 per centum of the total amount of funds received under this part by such State; or

(ii) $200,000;

may be used by such State for administrative costs related to carrying out sections 612 and 613;

(B) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3).

(c)(1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter—

(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) except as provided in paragraph (4), 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 612(3).

(2)(A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (1)(A)—

(i) an amount which is equal to the greater of—

(I) 5 per centum of the total amount of funds received under this part by such State; or

(II) $450,000;

may be used by such State for administrative costs related to carrying out the provisions of sections 612 and 613; and

(ii) the part remaining after use in accordance with clause (i) shall be used by the State (I) to provide support services and direct services in accordance with the priorities established under section 612(3), and (II) for the administrative costs of monitoring and complaint investigation but only to the extent that such costs exceed the costs of administration incurred during fiscal year 1985.

(B) The amount expended by any State from the funds available to such State under paragraph (1)(A) in any fiscal year for the provision of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

(3) The provisions of section 613(a)(9) shall not apply with respect to amounts available for use by any State under paragraph (2).

(4)(A) No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

(i) such local educational agency or intermediate educational unit is entitled, under subsection (d), to less than $7,500 for such fiscal year; or

(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 614.

(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to children with disabilities residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2)(B) shall not apply to the use of such funds.

(d) From the total amount of funds available to local educational agencies and intermediate educational units in any State under subsection (b)(1)(B) or subsection (c)(1)(B), as the case may be, each local educational agency or intermediate educational unit shall be entitled to an amount which bears the same ratio to the total amount available under subsection (b)(1)(B) or subsection (c)(1)(B), as the case may be, as the number of children with disabilities aged three to twenty-one, inclusive, receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of children with disabilities aged three to twenty-one, inclusive, receiving special education and related services in all local educational agencies and intermediate educational units which apply to the State educational agency involved for funds under this part.

(e)(1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.[1]

(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 601(c) in an amount equal to an amount determined by the Secretary in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of the amounts available to all States under this part for that fiscal year. If the aggregate of the amounts, determined by the Secretary pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount allotted to such jurisdiction for any fiscal year, or $35,000, whichever is greater.

(f)(1) The Secretary shall make payments to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5–21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. In the case of Indian students ages 3–5, inclusive, who are enrolled in programs affiliated with Bureau of Indian Affairs (hereafter in this subsection referred to as "BIA") schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (3). The amount of such payment for any fiscal year shall be 1 percent of the aggregate amounts available for all States under this section for that fiscal year.

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[1] Section 802(d)(3) of Public Law 102–73 amended section 611(e)(1) of the Education of the Handicapped Act by striking "and the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658)". The amendment probably should have been made to the Individuals With Disabilities Education Act. Section 25(a)(19) of P.L. 102-119, 105 Stat. 606 made a second amendment.

(2) With respect to all other children aged 3–21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

(3) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary of Education an application that—

(A) meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities), 613, and 614(a);

(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures required under subparagraph (A);

(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618(b)(1), including data on the number of children and youth with disabilities served and the types and amounts of services provided and needed and this information shall be included in the annual report of the Secretary of Education to Congress required in section 618(g);

(E) includes an assurance that, by October 1, 1992, the Secretaries of the Interior and Health and Human Services will enter into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations. Such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical/personal supplies as needed for a child to remain in school or a program; and

(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this Act, and will fulfill its duties under this Act.

Section 616(a) shall apply to any such application.

(4)(A) Beginning with funds appropriated under section 611(a) for fiscal year 1992, the Secretary shall, subject to this paragraph, make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortiums of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3–5, inclusive, on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be .25 percent of the aggregate amounts available for all States under this section for that fiscal year.

(B) The Secretary of the Interior shall distribute the total amount of the .25 percent under subparagraph (A) in the following manner:

(i) For the first fiscal year, each tribe or tribal organization shall receive an amount proportionate to the amount of weighted student units for special education programs for BIA operated or funded schools serving such reservation generated under the formula established under section 1128 of the Education Amendments of 1978, divided by the total number of such students in all BIA operated or funded schools.

(ii) For each fiscal year thereafter, each tribe or tribal organization shall receive an amount based on the number of children with disabilities, ages 3–5, inclusive, residing on reservations as reported annually divided by the total of such children served by all tribes or tribal organizations.

(C) To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

(D) The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3–5, inclusive, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(E) To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall make a biennial report to the Secretary of the Interior of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year and the estimated number of children needing services during the 2 years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

(F) The Secretary of the Interior shall offer and, on request, provide technical assistance (especially in the areas of child find, diagnosis, and referral) to State and local educational agencies (where appropriate, intermediate educational units), and tribes and tribal organizations. Such assistance may be provided through its divisions and offices at the national and local level.

(G) None of the funds allocated under this paragraph can be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(5) Before January 1, 1992, the Secretary of the Interior shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing such a plan, the Secretary of the Interior shall consult with all interested and involved parties. It shall be based upon the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. Such plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, children, and youth with disabilities, to tribes, and to other interested parties.

(6) To meet the requirements of sections 613(a)(12) of this Act, the Secretary of the Interior shall establish, within 6 months of the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1991, under the Bureau of Indian Affairs (BIA), an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

(A) assist in the coordination of services within BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, children, and youth with disabilities;

(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, children, and youth with disabilities; and

(E) provide assistance in the preparation of information required under paragraph (3)(D).

(g)(1) If the sums appropriated under subsection (h) for any fiscal year for making payments to States under subsection (a) are not sufficient to pay in full the total amounts which all States are entitled to receive under subsection (a) for such fiscal year, the maximum amounts which all States are entitled to receive under subsection (a) for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(2) In the case of any fiscal year in which the maximum amounts for which States are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency or intermediate educational unit shall report to the State educational agency on the amount of funds available to the local educational agency or intermediate educational unit, under the provisions of subsection (d), which it estimates that it will expend in accordance with the provisions of this section. The amounts so available to any local educational agency or intermediate educational unit, or any amount which would be available to any other local educational agency or intermediate educational unit if it were to submit a program meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies or intermediate educational units, in the manner provided by this section, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(h) For grants under subsection (a) there are authorized to be appropriated such sums as may be necessary.

(20 U.S.C. 1411) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 611, 84 Stat. 178; amended August 21, 1974, P.L. 93–380, sec. 614(a), 88 Stat. 580, 581; amended November 29, 1975, P.L. 94–142, sec. 5(a), 89 Stat. 776, 777, 778, 779, 780; amended June 14, 1980, P.L. 96-270, sec. 13, 94 Stat. 498; amended December 2, 1983, P.L. 98–199, sec. 15, 97 Stat. 1374; amended November 22, 1985, P.L. 99–159, Sec. 601, 99 Stat. 904; amended October 8, 1986, P.L. 99–457, sec. 201(b), 403, 404, 100 Stat. 1158, 1173; amended November 7, 1988, P.L. 100–690, sec. 102(a), 102 Stat. 3290–3291; amended October 30, 1990, P.L. 101–476, secs. 201 and 901(b)(25)–(32), 104 Stat. 1111, 1143; amended October 7, 1991, P.L. 102–119, secs. 4 and 25(a)(4) and (19), 105 Stat. 587 and 606.

ELIGIBILITY

SEC. 612. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

(1) The State has in effect a policy that assures all children with disabilities the right to a free appropriate public education.

(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as

to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

(A) there is established (i) a goal of providing full educational opportunity to all children with disabilities, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

(B) a free appropriate public education will be available for all children with disabilities between the ages of three and eighteen within the State not later than September 1, 1978, and for all children with disabilities between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to children with disabilities aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

(C) all children residing in the State who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

(D) policies and procedures are established in accordance with detailed criteria prescribed under section 617(c); and

(E) any amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Secretary.

(3) The State has established priorities for providing a free appropriate public education to all children with disabilities, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to children with disabilities[1] who are not receiving an education, and second with respect to children with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

(4) Each local educational agency in the State will maintain records of the individualized education program for each

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[1] Section 25(a)(5) of P.L. 102-119, 105 Stat. 606 attempted to strike "first with respect to handicapped children" and insert "first with respect to children with disabilities".

child with a disability, and such program shall be established, reviewed, and revised as provided in section 614(a)(5).

(5) The State has established (A) procedural safeguards as required by section 615, (B) procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for children with disabilities within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency and shall meet educational standards of the State educational agency. This paragraph shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the costs of a free appropriate public education to be provided children with disabilities in the State.

(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents or guardians of children with disabilities, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 613.

(20 U.S.C. 1412) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 612, 84 Stat. 178; amended June 23, 1972, P.L. 92–318, sec. 421(b)(1)(C), 86 Stat. 341; amended August 21, 1974, P.L. 93–380, sec. 614(b)(1), 88 Stat. 582; amended November 29, 1975, P.L. 94–142, sec. 5(a), 89 Stat. 780, 781, 782; amended October 8, 1986, P.L. 99–457, sec. 203(a), 100 Stat. 1158; amended November 7, 1988, P.L. 100–630, sec. 102(b), 102 Stat. 3291; amended October 30, 1990, P.L. 101–476, sec. 901 (b)(33)–(46), (c), 104 Stat. 1143–44, 1151.

STATE PLANS

SEC. 613. (a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Secretary, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as the Secretary deems necessary. Each such plan shall—

(1) set forth policies and procedures designed to assure that funds paid to the State under this part will be expended in accordance with the provisions of this part, with particular attention given to the provisions of sections 611(b), 611(c), 611(d), 612(2), and 612(3);

(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, under which there is specific authority for the provision of assistance for the education of children with disabilities, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

(3) describe, consistent with the purposes of this Act and with the comprehensive system of personnel development described in section 676(b)(8), a comprehensive system of personnel development that shall include—

(A) a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified special education and related services personnel, including—

(i) the development and maintenance of a system for determining, on an annual basis—

(I) the number and type of personnel, including leadership personnel, that are employed in the provision of special education and related services, by area of specialization, including the number of such personnel who are employed on an emergency, provisional, or other basis, who do not hold appropriate State certification or licensure; and

(II) the number and type of personnel, including leadership personnel, needed, and a projection of the numbers of such personnel that will be needed in five years, based on projections of individuals to be served, retirement and other leaving of personnel from the field, and other relevant factors;

(ii) the development and maintenance of a system for determining, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including—

(I) the numbers of students enrolled in such programs, and

(II) the number who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year; and

(iii) the development, updating, and implementation of a plan that—

(I) will address current and projected special education and related services personnel needs, including the need for leadership personnel; and

(II) coordinates and facilitates efforts among State and local educational agencies, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities; and

(B) a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, including—

(i) a system for the continuing education of regular and special education and related services personnel;

(ii) procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

(iii) procedures for adopting, where appropriate, promising practices, materials, and technology.[1]

(4) set forth policies and procedures to assure—

(A) that, to the extent consistent with the number and location of children with disabilities in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and

(B) that—

(i) children with disabilities in private schools and facilities will be provided special education and related services (in conformance with an individualized education program as required by this part) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State, and

(ii) in all such instances, the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

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[1] So in law. Probably should be a semicolon, See P.L. 101–476, sec. 202, 104 Stat. 1111.

(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this part for services to any child who is determined to be erroneously classified as eligible to be counted under section 611(a) or section 611(d);

(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

(7) provide for—

(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part, and

(B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

(9) provide satisfactory assurance that Federal funds made available under this part—

(A) will not be commingled with State funds, and

(B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive in part the requirement of this subparagraph if the Secretary concurs with the evidence provided by the State;

(10) provide, consistent with procedures prescribed pursuant to section 617(a)(2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of children with disabilities (including evaluation of individualized education programs), in accordance with such criteria that the Secretary shall prescribe pursuant to section 617;

(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities, teachers, parents or guardians of children with disabilities, State and local education officials, and administrators of programs for children with disabilities, which—

(A) advises the State educational agency of unmet needs within the State in the education of children with disabilities,

(B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of children with disabilities and the procedures for distribution of funds under this part, and

(C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of the responsibilities of the Secretary under section 618;

(13) set forth policies and procedures for developing and implementing interagency agreements between the State educational agency and other appropriate State and local agencies to—

(A) define the financial responsibility of each agency for providing children and youth with disabilities with free appropriate public education, and

(B) resolve interagency disputes, including procedures under which local educational agencies may initiate proceedings under the agreement in order to secure reimbursement from other agencies or otherwise implement the provisions of the agreement;

(14) set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including—

(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing special education or related services, and

(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State; and

(15) set forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program assisted under part H who will participate in preschool programs assisted under this part, including a method of ensuring that when a child turns age three an individualized education program, or, if consistent with sections 614(a)(5) and 677(d), an individualized family service

plan, has been developed and is being implemented by such child's third birthday.

(b) Whenever a State educational agency provides free appropriate public education for children with disabilities, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) as are contained in section 614(a), except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 614(a).

(c)(1) The Secretary shall approve any State plan and any modification thereof which—

(A) is submitted by a State eligible in accordance with section 612; and

(B) meets the requirements of subsection (a) and subsection (b).

(2) The Secretary shall disapprove any State plan which does not meet the requirements of paragraph (1), but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

(d)(1) If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(4), the Secretary shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a)(4).

(2)(A) When the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services an amount per child which may not exceed the Federal amount provided per child under this part to all children with disabilities enrolled in the State for services for the fiscal year preceding the fiscal year for which the determination is made.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(4).

(3)(A) The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

(B) If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(e) This Act shall not be construed to permit a State to reduce medical and other assistance available or to alter eligibility under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities within the State.

(20 U.S.C. 1413) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 613, 84 Stat. 179; amended August 21, 1974, P.L. 93–380, sec. 614(d), 88 Stat. 581, 582; amended November 29, 1975, P.L. 94–142, sec. 5(a), 89 Stat. 782, 783, 784; ; amended December 2, 1983, P.L. 98–199, sec. 7, 97 Stat. 1359; amended October 8, 1986, P.L. 99–457, sec. 203(b), 405, 100 Stat. 1159, 1174; amended November 7, 1988, P.L. 100–630, sec. 102(c), 102 Stat. 3291–3293; amended October 30, 1990, P.L. 101–476, secs. 202 and 901(b)(47)–(58), 104 Stat. 1111–12, 1144; amended October 7, 1991, P.L. 102–119, secs. 5 and 25(a)(6), 105 Stat. 591 and 606.

APPLICATION

SEC. 614. (a) A local educational agency or an intermediate educational unit which desires to receive payments under section 611(d) for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—

(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are disabled, regardless of the severity of their disability, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

(B) establish policies and procedures in accordance with detailed criteria prescribed under section 617(c);

(C) establish a goal of providing full educational opportunities to all children with disabilities, including—

(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 613(a)(3);

(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all children with disabilities, first with respect to handicapped children who are not receiving an education, and second with respect to children with disabilities, within each disability, with the most severe disabilities who are receiving an inadequate education;

(iii) the participation and consultation of the parents or guardian of such children; and

(iv) to the maximum extent practicable and consistent with the provisions of section 612(5)(B), the provision of special services to enable such children to participate in regular educational programs;

(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

(2) provide satisfactory assurance that—

(A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property,

(B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part—

(i) shall be used to pay only the excess costs directly attributable to the education of children with disabilities; and

(ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant such State and local funds; and

(C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas that, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction that are not receiving funds under this part;

(3) provide for—

(A) furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of children with disabilities participating in programs carried out under this part; and

(B) keeping such records, and affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subparagraph (A);

(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluations and reports required under clause (3) shall be public information;

(5) provide assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each child with a disability (or, if consistent with State policy and at the discretion of the local educational agency or intermediate educational unit, and with the concurrence of the parents or guardian, an individualized family service plan described in section 677(d) for each child with a disability aged 3 to 5, inclusive) at the beginning of each school year and will then review and, if appropriate, revise, its provisions periodically, but not less than annually;

(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a); and

(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 612(5)(B), 612(5)(C), and 615.

(b)(1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application meets the requirements of subsection (a), except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) is approved by the Secretary under section 613(c). A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application does not meet the requirements of subsection (a).

(2)(A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

(i) make no further payments to such local educational agency or such intermediate educational unit under section

620 until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a).

(B) The provisions of the last sentence of section 616(a) shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 615 which is adverse to the local educational agency or intermediate educational unit involved in such decision.

(c)(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to receive payments because of the application of section 611(c)(4)(A)(i) or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities.

(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agencies may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 611(d) if an individual application of any such local educational agency had been approved.

(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a) and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this part, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

(d) Whenever a State educational agency determines that a local educational agency—

(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a);

(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

(3) has one or more children with disabilities who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special education and related services directly to children with disabilities residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this part.

(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 611(d), to such other local educational agencies within the State as are not adequately providing special education and related services to all children with disabilities residing in the areas served by such other local educational agencies.

(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of children with disabilities pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

(20 U.S.C. 1414) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 614, 84 Stat. 181; amended November 29, 1975, P.L. 94–142, sec. 5(a), 89 Stat. 784, 785, 786, 787, 788; amended November 7, 1988, P.L. 100–630, sec. 102(d), 102 Stat. 3293–3294; amended October 30, 1990, P.L. 101–476, sec. 901(b)(59)–(70), 104 Stat. 1144–45; amended October 7, 1991, P.L. 102–119, sec. 6, 105 Stat. 591.

PROCEDURAL SAFEGUARDS

SEC. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that children with disabilities and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

(b)(1) The procedures required by this section shall include, but shall not be limited to—

(A) an opportunity for the parents or guardian of a child with a disability to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

(i) proposes to initiate or change, or

(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(D) procedures designed to assure that the notice required by clause (C) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded—

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities,

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses,

(3) the right to a written or electronic verbatim record of such hearing, and

(4) the right to written findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) and

shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

(4)(A) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(B) In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party.

(C) For the purpose of this subsection, fees awarded under this subsection shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) No award of attorneys' fees and related costs may be made in any action or proceeding under this subsection for services performed subsequent to the time of a written offer of settlement to a parent or guardian, if—

(i) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) the offer is not accepted within ten days; and

(iii) the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parents or guardian than the offer of settlement.

(E) Notwithstanding the provisions of subparagraph (D), an award of attorneys' fees and related costs may be made to a parent or guardian who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Whenever the court finds that—

(i) the parent or guardian, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, experience, and reputation; or

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding,

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this subsection.

(G) The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of this Act.

(f) Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973, or other Federal statutes protecting the rights of children and youth with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (b)(2) and (c) shall be exhausted to the same extent as would be required had the action been brought under this part.

(20 U.S.C. 1415) Enacted November 29, 1975, P.L. 94–142, sec. 5(a), 89 Stat. 788, 789; amended August 5, 1986, P.L. 99–372, secs. 2, 3, 100 Stat. 796, 797; amended November 7, 1988, P.L. 100–630, sec. 102(e), 102 Stat. 3294; amended October 30, 1990, P.L. 101–476, sec. 901(b)(71)–(75), 104 Stat. 1145.

WITHHOLDING AND JUDICIAL REVIEW

SEC. 616. (a) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

(2) that in the administration of the State plan there is a failure to comply with any provision of this part or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan, the Secretary—

(A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and

(B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 613(a)(2) within the Secretary's jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of children with disabilities.

If the Secretary withholds further payments under clause (A) or clause (B) the Secretary may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in clause (1) or clause (2), no further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) within the Secretary's jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of children with disabilities, or payments by the State educational agency under this part shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

(b)(1) If any State is dissatisfied with the Secretary's final action with respect to its State plan submitted under section 613, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(20 U.S.C. 1416) Enacted November 29, 1975 P.L. 94–142, sec. 5(a), 89 Stat. 789, 790; amended November 7, 1988, P.L. 100–630, sec. 102(f), 102 Stat. 3294; amended October 30, 1990, P.L. 101–476, sec. 901(b)(76), 104 Stat. 1145.

ADMINISTRATION

SEC. 617. (a)(1) In carrying out the Secretary's duties under this part, the Secretary shall—

(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of children with disabilities and the execution of the provisions of this part;

(B) provide such short-term training programs and institutes as are necessary;

(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

(D) assure that each State shall, within one year after the date of the enactment of the Education for All Handicapped Children Act of 1975 and every year thereafter, provide certification of the actual number of children with disabilities receiving special education and related services in such State.

(2) As soon as practicable after the date of the enactment of the Education for All Handicapped Children Act of 1975, the Secretary shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting plans under this part in order to assure equity among the States.

(b) In carrying out the provisions of this part, the Secretary shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

(c) The Secretary shall take appropriate action, in accordance with the provisions of section 438 of the General Education Provisions Act, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part.

(d) The Secretary is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 618 and to carry out the Secretary's duties under subsection (a)(1) of this subsection without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

(20 U.S.C. 1417) Enacted November 29, 1975, P.L. 94–142, sec. 5(a), 89 Stat. 791; amended November 7, 1988, P.L. 100–630, sec. 102(g), 102 Stat. 3295; amended October 30, 1990, P.L. 101–476, sec. 901(b), (77) (78), 104 Stat. 1145; amended October 7, 1991, P.L. 102–119, sec. 25(a)(7), 105 Stat. 606.

EVALUATION AND PROGRAM INFORMATION

SEC. 618. (a) The Secretary shall, directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, analyses, and evaluations—

(1) to assess progress in the implementation of this Act;

(2) to assess the impact and effectiveness of State and local efforts, and efforts by the Secretary of the Interior, to provide—

(A) free appropriate public education to children and youth with disabilities; and

(B) early intervention services to infants and toddlers with disabilities; and

(3) to provide—

(A) Congress with information relevant to policymaking; and

(B) State, local, and Federal agencies, including the Department of the Interior, with information relevant to program management, administration, delivery, and effectiveness with respect to such education and early intervention services.

(b)(1) In carrying out subsection (a), the Secretary, on at least an annual basis (except as provided in subparagraph (E)), shall obtain data concerning programs and projects assisted under this Act and under other Federal laws relating to infants, toddlers, children, and youth with disabilities, and such additional information, from State and local educational agencies, the Secretary of the Interior, and other appropriate sources, including designated lead agencies under part H (except that during fiscal year 1992 such entities may not under this subsection be required to provide data regarding traumatic brain injury or autism), including—

(A) the number of infants, toddlers, children, and youth with disabilities in each State receiving a free appropriate public education or early intervention services—

(i) in age groups 0–2 and 3–5, and

(ii) in age groups 6–11, 12–17, and 18–21, by disability category;

(B) the number of children and youth with disabilities in each State, by disability category, who—

(i) are participating in regular educational programs (consistent with the requirements of section 612(5)(B) and 614(a)(1)(C)(iv));

(ii) are in separate classes, separate schools or facilities, or public or private residential facilities; or

(iii) have been otherwise removed from the regular education environment;

(C) the number of children and youth with disabilities exiting the educational system each year through program completion or otherwise, by disability category, for each year of age from age 14 through 21;

(D) the number and type of personnel that are employed in the provision of—

(i) special education and related services to children and youth with disabilities, by disability category served; and

(ii) early intervention services to infants and toddlers with disabilities; and

(E) at least every three years, using the data collection method the Secretary finds most appropriate, a description of the services expected to be needed, by disability category, for youth with disabilities in age groups 12–17 and 18–21 who have left the educational system.

(2) Beginning with fiscal year 1993, the Secretary shall obtain and report data from the States under section 613(a)(3)(A), including data addressing current and projected special education and related services needs, and data on the number of personnel who are employed on an emergency, provisional, or other basis, who do not

hold appropriate State certification or licensure, and other data for the purpose of meeting the requirements of this subsection pertaining to special education and related services personnel.

(3) The Secretary shall provide, directly or by grant, contract, or cooperative agreement, technical assistance to State agencies providing the data described in paragraphs (1) and (2) to achieve accurate and comparable information.

(c)(1) The Secretary shall make grants to, or enter into contracts or cooperative agreements with, State or local educational agencies, institutions of higher education, public agencies, and private nonprofit organizations, and, when necessary because of the unique nature of the study, private-for-profit organizations, for the purpose of conducting studies, analyses, syntheses, and investigations for improving program management, administration, delivery, and effectiveness necessary to provide full educational opportunities and early interventions for all children with disabilities from birth through age 21. Such studies and investigations shall gather information necessary for program and system improvements including—

(A) developing effective, appropriate criteria and procedures to identify, evaluate, and serve infants, toddlers, children, and youth with disabilities from minority backgrounds for purposes of program eligibility, program planning, delivery of services, program placement, and parental involvement;

(B) planning and developing effective early intervention services, special education, and related services to meet the complex and changing needs of infants, toddlers, children, and youth with disabilities;

(C) developing and implementing a comprehensive system of personnel development needed to provide qualified personnel in sufficient number to deliver special education, related services, and early intervention services;

(D) developing the capacity to implement practices having the potential to integrate children with disabilities, to the maximum extent appropriate, with children who are not disabled;

(E) effectively allocating and using human and fiscal resources for providing early intervention, special education, and related services;

(F) strengthening programs and services to improve the progress of children and youth with disabilities while in special education, and to effect a successful transition when such children and youth leave special education;

(G) achieving interagency coordination to maximize resource utilization and continuity in services provided to infants, toddlers, children, and youth with disabilities;

(H) strengthening parent-school communication and coordination to improve the effectiveness of planning and delivery of interventions and instruction, thereby enhancing development and educational progress; and

(I) the identification of environmental, organizational, resource, and other conditions necessary for effective professional practice.

(2)(A) The studies and investigations authorized under this subsection may be conducted through surveys, interviews, case studies, program implementation studies, secondary data analyses and syntheses, and other appropriate methodologies.

(B) The studies and investigations conducted under this subsection shall address the information needs of State and local educational agencies for improving program management, administration, delivery, and effectiveness.

(3) The Secretary shall develop and implement a process for the on-going identification of national program information needed for improving the management, administration, delivery, and effectiveness of programs and services provided under this Act. The process shall identify implementation issues, desired improvements, and information needed by State and local agencies to achieve such improvements, and shall be conducted in cooperation with State educational agencies that can ensure broad-based statewide input from each cooperating State. The Secretary shall publish for public comment in the Federal Register every 3 years a program information plan describing such information needs. Such program information plan shall be used to determine the priorities for, and activities carried out under, this subsection to produce, organize, and increase utilization of program information. Such program information plan shall be included in the annual report submitted under section 618 every 3 years.

(4) In providing funds under this subsection, the Secretary shall require recipients to prepare their procedures, findings, and other relevant information in a form that will maximize their dissemination and use, especially through dissemination networks and mechanisms authorized by this Act, and in a form for inclusion in the annual report to Congress authorized under subsection (g).

(d)(1) The Secretary shall enter into cooperative agreements with State educational agencies and other State agencies to carry out studies to assess the impact and effectiveness of programs, policies, and procedures assisted under this Act.

(2) The agreements referred to in paragraph (1) shall—

(A) provide for the payment of not more than 60 percent of the total cost of studies conducted by a participating State agency to assess the impact and effectiveness of this Act; and

(B) be developed in consultation with the State Advisory Panel established under section 613(a)(12), local educational agencies, and others involved in, or concerned with, the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities.

(3) The Secretary shall provide technical assistance to participating State agencies in the implementation of the study design, analysis, and reporting procedures.

(e)(1) The Secretary shall by grant, contract, or cooperative agreement, provide for special studies to assess progress in the implementation of this Act, and to assess the impact and effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities. Reports from such studies shall include recommendations for improving programs and services to such individuals. The Secretary shall, beginning in fiscal year 1993 and for every third year thereafter, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed priorities for review and comment.

(2) In selecting priorities for fiscal years 1991 through 1994, the Secretary may give first consideration to—

(A) completing a longitudinal study of a sample of students with disabilities, examining—

(i) the full range of disabling conditions;

(ii) the educational progress of students with disabilities while in special education; and

(iii) the occupational, educational, and independent living status of students with disabilities after graduating from secondary school or otherwise leaving special education.

(B) conducting pursuant to this subsection a nationally representative study focusing on the types, number, and intensity of related services provided to children with disabilities by disability category.

(C) conducting pursuant to this subsection a study that examines the degree of disparity among States with regard to the placement in various educational settings of children and youth with similar disabilities, especially those with mental retardation, and, to the extent that such disparity exists, the factors that lead such children and youth to be educated in significantly different educational settings.

(D) conducting pursuant to this subsection a study that examines the factors that have contributed to the decline in the number of children classified as mentally retarded since the implementation of this Act, and examines the current disparity among States in the percentage of children so classified.

(E) conducting pursuant to this subsection a study that examines the extent to which out-of-community residential programs are used for children and youth who are seriously emotionally disturbed, the factors that influence the selection of such placements, the degree to which such individuals transition back to education programs in their communities, and the factors that facilitate or impede such transition.

(F) conducting pursuant to this subsection a study that examines (i) the factors that influence the referral and placement decisions and types of placements, by disability category and English language proficiency, of minority children relative to other children, (ii) the extent to which these children are placed in regular education environments, (iii) the extent to which the parents of these children are involved in placement decisions and in the development and implementation of the individualized education program and the results of such participation, and (iv) the type of support provided to parents of these children that enable these parents to understand and participate in the educational process.

(f) The Secretary shall make grants to, or enter into contracts or cooperative agreements with, State or local educational agencies, institutions of higher education, other public agencies, and private nonprofit organizations to support activities that organize, synthesize, interpret, and integrate information obtained under subsections (c) and (e) with relevant knowledge obtained from other sources. Such activities shall include the selection and design of content, formats, and means for communicating such information effectively to specific or general audiences, in order to promote the use of such information in improving program administration and management, and service delivery and effectiveness.

(g)(1)(A) The Secretary is authorized to conduct activities, directly or by grant, contract, or cooperative agreement, to prepare an annual report on the progress being made toward the provision of—

(i) a free appropriate public education to all children and youth with disabilities; and

(ii) early intervention services for infants and toddlers with disabilities.

(B) Not later than 120 days after the close of each fiscal year, the Secretary shall transmit a copy of the report authorized under subparagraph (A) to the appropriate committees of each House of Congress. The annual report shall be published and disseminated in sufficient quantities to the education and disability communities and to other interested parties.

(2) The Secretary shall include in each annual report under paragraph (1)—

(A) a compilation and analysis of data gathered under subsection (b) and under part H; and

(B) a description of findings and determinations resulting from monitoring reviews of State implementation of this part.

(3) In the annual report under paragraph (1) for fiscal year 1991 (which is published in 1992) and for every third year thereafter, the Secretary shall include in the annual report—

(A) an index of all current projects funded under parts C through G; and

(B) data reported under sections 622 and 634.

(4) The Secretary shall include in each annual report under paragraph (1) the results of research and related activities conducted under part E that the Secretary determines are relevant to the effective implementation of this Act.

(5) The Secretary shall, in consultation with the National Council on Disability and the Bureau of Indian Affairs Advisory Committee for Exceptional Children, include a description of the status of early intervention services for infants and toddlers with disabilities from birth through age 2, and special education and related services to children with disabilities from 3 through 5 years of age (including those receiving services through Head Start, developmental disabilities programs, crippled children's services, mental health/mental retardation agencies, and State child-development centers and private agencies under contract with local schools).

(h) There are authorized to be appropriated $12,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 through 1994 to carry out the purposes of this section and not more than 30 percent may be used to carry out the purposes of subsection (e) of this section.

(20 U.S.C. 1418) Enacted October 30, 1990, P.L. 101–476, sec. 203, 104 Stat. 1112–17.

PRESCHOOL GRANTS [1]

SEC. 619. (a)(1) [2] For fiscal years 1987 through 1989 (or fiscal year 1990 if the Secretary makes a grant under this paragraph for such fiscal year) the Secretary shall make a grant to any State which—

(A) has met the eligibility requirements of section 612,

(B) has a State plan approved under section 613, and

(C) provides special education and related services to children with disabilities aged three to five, inclusive.

(2)(A) For fiscal year 1987 the amount of a grant to a State under paragraph (1) may not exceed—

(i) $300 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3), or

(ii) if the amount appropriated under subsection (e) exceeds the product of $300 and the total number of children with disabilities aged three to five, inclusive, who received special education and related services as determined under section 611(a)(3)—

(I) $300 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3), plus

(II) an amount equal to the portion of the appropriation available after allocating funds to all States under subclause (I) (the excess appropriation) divided by the estimated increase, from the preceding fiscal year, in the number of children with disabilities aged three to five, inclusive, who will be receiving special education and related services in all States multiplied by the estimated increase in the number of such children in such State.

(B) For fiscal year 1988, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be $400 instead of $300.

(C) For fiscal year 1989, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be $500 instead of $300.

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[1] Section 110 of Public Law 100–630 (102 Stat. 3303) provides as follows: "The provisions of section 300.300(b)(3) of title 34, Code of Federal Regulations, shall not apply with respect to children aged 3 through 5, inclusive, in any State for any fiscal year for which the State receives a grant under section 619(a)(1) of the Education of the Handicapped Act."

Section 901(a) of Public Law 101–476 changed the short title of title VI of Public Law 91–230 from the "Education of the Handicapped Act" to the "Individuals with Disabilities Education Act". Such section made conforming amendments to certain Acts, and in the case of any other Act and any regulation, provided that any reference to the Education of the Handicapped Act shall be considered to be a reference to the Individuals with Disabilities Education Act.

[2] Section 109 of Public Law 100–630 (102 Stat. 3302) provides as follows:

"(a) SPECIAL RULE.—Notwithstanding section 412(b)(2) of the General Education Provisions Act, a State educational agency may use funds made available in fiscal year 1986 under section 619 of the Education of the Handicapped Act for expenditure in fiscal year 1987 in accordance with the statutory and regulatory provisions relating to such program that were in effect for fiscal year 1986 and the application submitted by such agency for such program for such fiscal year.

"(b) EFFECTIVE DATE.—This section shall be effective as of October 1, 1987."

(D) If the Secretary makes a grant under paragraph (1) for fiscal year 1990, the amount of a grant to a State under such paragraph may not exceed $1,000 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3).

(E) If the actual number of additional children served in a fiscal year differs from the estimate made under subparagraph (A)(ii)(II), the Secretary shall adjust (upwards or downwards) a State's allotment in the subsequent fiscal year.

(F)(i) The amount of a grant under subparagraph (A), (B), or (C) to any State for a fiscal year may not exceed $3,800 per estimated child with a disability aged three to five, inclusive, who will be receiving or child with a disability, age three to five, inclusive, who is receiving special education and related services in such State.

(ii) If the amount appropriated under subsection (e) for any fiscal year exceeds the amount of grants which may be made to the States for such fiscal year, the excess amount appropriated shall remain available for obligation under this section for 2 succeeding fiscal years.

(3) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b)(1) For fiscal year 1990 (or fiscal year 1991 if required by paragraph (2)) and fiscal years thereafter the Secretary shall make a grant to any State which—

(A) has met the eligibility requirements of section 612, and

(B) has a State plan approved under section 613 which includes policies and procedures that assure the availability under the State law and practice of such State of a free appropriate public education for all children with disabilities aged three to five, inclusive, and for any two-year-old children provided services by the State under subsection (c)(2)(B)(iii) or by a local educational agency or intermediate educational unit under subsection (f)(2).

(2) The Secretary may make a grant under paragraph (1) only for fiscal year 1990 and fiscal years thereafter, except that if—

(A) the aggregate amount that was appropriated under subsection (e) for fiscal years 1987, 1988, and 1989 was less than $656,000,000, or

(B) the amount appropriated for fiscal year 1990 under subsection (e) is less than $306,000,000,

the Secretary may not make a grant under paragraph (1) until fiscal year 1991 and shall make a grant under subsection (a)(1) for fiscal year 1990.

(3) The amount of any grant to any State under paragraph (1) for any fiscal year may not exceed $1,500 for each child with a disability in such State aged three to five, inclusive.

(4) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(c)(1) For fiscal year 1987, a State which receives a grant under subsection (a)(1) shall—

(A) distribute at least 70 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only children with disabilities aged three to five, inclusive, shall be considered,

(B) use not more than 25 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 623(b) in effect through fiscal year 1987 and for direct and support services for children with disabilities, and

(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

(2) For fiscal years beginning after fiscal year 1987, a State which receives a grant under subsection (a)(1) or (b)(1) shall—

(A) distribute at least 75 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only children with disabilities aged three to five, inclusive, shall be considered,

(B) use not more than 20 percent of such grant—

(i) for planning and development of a comprehensive delivery system,

(ii) for direct and support services for children with disabilities, aged 3 to 5, inclusive, and

(iii) at the State's discretion, to provide a free appropriate public education, in accordance with this Act, to 2-year-old children with disabilities who will reach age 3 during the school year, whether or not such children are receiving, or have received, services under part H, and

(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

(3) From the amount of funds available to local educational agencies and intermediate educational units in any State under this section, each local educational agency or intermediate educational unit shall be entitled to—

(A) an amount which bears the same ratio to the amount available under subsection (a)(2)(A)(i) or subsection (a)(2)(A)(ii)(I), as the case may be, as the number of children with disabilities aged three to five, inclusive, who received special education and related services as determined under section 611(a)(3) in such local educational agency or intermediate educational unit bears to the aggregate number of children with disabilities aged three to five, inclusive, who received special education and related services in all local educational agencies and intermediate educational units in the State entitled to funds under this section, and

(B) to the extent funds are available under subsection (a)(2)(A)(ii)(II), an amount which bears the same ratio to the amount of such funds as the estimated number of additional children with disabilities aged three to five, inclusive, who will be receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of such children in all local educational agencies and intermediate educational units in the State entitled to funds under this section.

(d) If the sums appropriated under subsection (e) for any fiscal year for making payments to States under subsection (a)(1) or (b)(1) are not sufficient to pay in full the maximum amounts which all States may receive under such subsection for such fiscal year, the maximum amounts which all States may receive under such subsection for such fiscal year shall be ratably reduced by first ratably reducing amounts computed under the excess appropriation provision of subsection (a)(2)(A)(ii)(II). If additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, the reduced maximum amounts shall be increased on the same basis as they were reduced.

(e) For grants under subsections (a)(1) and (b)(1) there are authorized to be appropriated such sums as may be necessary.

(f) Each local educational agency or intermediate educational unit receiving funds under this section—

(1) shall use such funds to provide special education and related services to children with disabilities aged 3 to 5, inclusive, and

(2) may, if consistent with State policy, use such funds to provide a free appropriate public education, in accordance with this part, to 2-year-old children with disabilities who will reach age 3 during the school year, whether or not such children are receiving, or have received, services under part H.

(g) Part H of this Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with this part, with funds received under this section.

(20 U.S.C. 1419) Enacted November 29, 1975, P.L. 94–142, sec. 5 (a), 89 Stat. 793; amended December 2, 1983, P.L. 98–199, sec. 9, 97 Stat. 1363; amended October 8, 1986, P.L. 99–457, sec. 201(a), 100 Stat. 1155; amended November 7, 1988, P.L. 100–630, sec. 102(i), 102 Stat. 3296; amended October 30, 1990, P.L. 101–476, sec. 901(b)(79)–(93), 104 Stat. 1145–46; amended October 7, 1991, P.L. 102–119, sec. 7, 105 Stat. 591.

PAYMENTS

SEC. 620. (a) The Secretary shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this part. Any State educational agency receiving payments under this subsection shall distribute payments to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this part after the State educational agency has approved applications of such agencies or units for payments in accordance with section 614(b).

(b) Payments under this part may be made in advance or by way of reimbursement and in such installments as the Secretary may determine necessary.

(20 U.S.C. 1420) Enacted November 29, 1975, P.L. 94–142, sec. 5(a), 89 Stat. 793, 794.

PART C—CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF INDIVIDUALS WITH DISABILITIES

REGIONAL RESOURCE AND FEDERAL CENTERS

SEC. 621. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, public agencies, private nonprofit organizations, State educational agencies, or combinations of such agencies or institutions (which combinations may include one or more local educational agencies) within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional resource centers that focus on special education and related services and early intervention services. Each regional resource center shall provide consultation, technical assistance, and training, as requested, to State educational agencies and through such State educational agencies to local educational agencies and to other appropriate public agencies providing special education and related services and early intervention services. The services provided by a regional resource center shall be consistent with the priority needs identified by the States served by the center. Each regional resource center established or operated under this section shall—

(1) assist in identifying and solving persistent problems in providing quality special education and related services for children and youth with disabilities and early intervention services to infants and toddlers with disabilities and their families,

(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to children and youth with disabilities and their families and early intervention services to infants and toddlers with disabilities and their families,

(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this subsection and other relevant programs and projects conducted under parts C through G and by the Department of Education,

(4) assist in the improvement of information dissemination to and training activities for professionals and parents of infants, toddlers, children, and youth with disabilities, and

(5) provide information to and training for agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this part and parts D through G.

(b) In determining whether to approve an application for a project under subsection (a), the Secretary shall utilize criteria for setting criteria that are consistent with the needs identified by States within the region served by such center, consistent with requirements established by the Secretary under subsection (f), and, to the extent appropriate, consistent with requirements under section 610, and shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a).

(c) Each regional resource center shall report a summary of materials produced or developed and the summaries reported shall be included in the annual report to Congress required under section 618.

(d) The Secretary may establish one coordinating technical assistance center focusing on national priorities established by the Secretary to assist the regional resource centers in the delivery of technical assistance, consistent with such national priorities. Such coordinating technical assistance center is authorized to—

(1) provide information to, and training for, agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this part and parts D through G, and shall make such information available to the regional resource centers on request;

(2) give priority to providing technical assistance concerning the education of children with disabilities from minority backgrounds;

(3) exchange information with, and, where appropriate, cooperate with, other centers addressing the needs of children with disabilities from minority backgrounds; and

(4) provide assistance to State educational agencies, through the regional resource centers, for the training of hearing officers.

(e) Before using funds made available in any fiscal year to carry out this section for purposes of subsection (d), not less than the amount made available in the previous fiscal year for regional resource centers under subsection (a) shall be made available for such centers and in no case shall more than $500,000 be made available for the center under subsection (d).

(f)(1) The Secretary shall develop guidelines and criteria for the operation of Regional and Federal Resource Centers. In developing such criteria and guidelines, the Secretary shall establish a panel representing the Office of Special Education Programs staff, State special education directors, representatives of disability advocates, and, when appropriate, consult with the regional resource center directors.

(2) Such guidelines and criteria shall include—

(A) a description of how the Federal and Regional Resource Centers Program will be administered by the Secretary;

(B) a description of the geographic region each Center is expected to serve;

(C) a description of the role of a Center in terms of expected leadership and dissemination efforts;

(D) a description of expected relationships with State agencies, research and demonstration centers, and with other entities deemed necessary;

(E) a description of how a Center will be evaluated; and

(F) other guidelines and criteria deemed necessary.

(3) The Secretary shall publish in the Federal Register by July 1, 1991, for review and comment, proposed and (then following such review and comment) final guidelines developed by the panel.

(20 U.S.C. 1421) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 621, 84 Stat. 181; amended December 2, 1983, P.L. 98–199, sec. 10, 97 Stat. 1363; amended Octo-

ber 8, 1986, P.L. 99–457, sec. 301, 100 Stat. 1159; amended November 7, 1988, P.L. 100–630, sec. 103(a) and (b), 102 Stat. 3296–3297; amended October 30, 1990, P.L. 101–476, sec. 301 and 901(b)(95)–(99), 104 Stat. 1117–18, 1146.

SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

SEC. 622. (a)(1) The Secretary is authorized to make grants to, or to enter into cooperative agreements or contracts with, public or nonprofit private agencies, institutions, or organizations to assist State educational agencies, local educational agencies, and designated lead agencies under part H to—

(A) assure deaf-blind infants, toddlers, children and youth provision of special education, early intervention, and related services as well as vocational and transitional services; and

(B) make available to deaf-blind youth (who are in the process of transitioning into adult services) programs, services, and supports to facilitate such transition, including assistance related to independent living and competitive employment.

(2) For purposes of this section, the term "deaf-blind", with respect to children and youth, means having auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that they cannot be appropriately educated in special education programs solely for children and youth with hearing impairments, visual impairments, or severe disabilities, without supplementary assistance to address their educational needs due to these dual, concurrent disabilities.

(3)(A) A grant, cooperative agreement, or contract may be made under paragraph (1)(A) only for programs providing—

(i) technical assistance to agencies, institutions, or organizations providing educational or early intervention services to deaf-blind infants, toddlers, children, or youth;

(ii) preservice or inservice training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, deaf-blind infants, toddlers, children, or youth;

(iii) replication of successful innovative approaches to providing educational, early intervention, or related services to deaf-blind infants, toddlers, children, and youth;

(iv) pilot projects that are designed to—

(I) expand local educational agency capabilities by providing services to deaf-blind children and youth that supplement services already provided to children and youth through State and local resources; and

(II) encourage eventual assumption of funding responsibility by State and local authorities;

(v) the development, improvement, or demonstration of new or existing methods, approaches, or techniques that contribute to the adjustment and education of deaf-blind infants, toddlers, children, and youth; or

(vi) facilitation of parental involvement in the education of their deaf-blind infants, toddlers, children, and youth.

(B) The programs described in subparagraph (A) may include—

(i) the diagnosis and educational evaluation of infants, toddlers, children, and youth who are likely to be diagnosed as deaf-blind;

(ii) programs of adjustment, education, and orientation for deaf-blind infants, toddlers, children, and youth; and

(iii) consultative, counseling, and training services for the families of deaf-blind infants, toddlers, children, and youth.

(4) A grant, cooperative agreement, or contract pursuant to paragraph (1)(B) may be made only for programs providing (A) technical assistance to agencies, institutions, and organizations that are preparing deaf-blind adolescents for adult placements, or that are preparing to receive deaf-blind young adults into adult living and work environments, or that serve, or propose to serve, deaf-blind individuals; (B) training or inservice training to paraprofessionals or professionals serving, or preparing to serve, such individuals; and (C) assistance in the development or replication of successful innovative approaches to providing rehabilitative, supervised, semisupervised, or independent living programs.

(5) In carrying out this subsection, the Secretary is authorized to enter into a number of grants or cooperative agreements to establish and support single and multi-State centers for the provision of technical assistance and pilot supplementary services, for the purposes of program development and expansion, for children and youth with deaf-blindness and their families.

(b) The Secretary is also authorized to enter into a limited number of cooperative agreements or contracts to establish and support regional programs for the provision of technical assistance in the education of deaf-blind children and youth.

(c)(1) Programs supported under this section shall report annually to the Secretary on (A) the numbers of deaf-blind children and youth served by age, severity, sex, and nature of deaf-blindness; (B) the number of paraprofessionals, professionals, and family members directly served by each activity; (C) the types of services provided and the setting in which the services are provided; and (D) student outcomes, where appropriate.

(2) The Secretary shall examine the number of deaf-blind children and youth (A) reported under subparagraph (c)(1)(A) and by the States; (B) served by the programs under part B of this Act and subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965; and (C) the Deaf-Blind Registry of each State. The Secretary shall revise the count of deaf-blind children and youth to reflect the most accurate count.

(3) The Secretary shall summarize these data for submission in the annual report required under section 618.

(d) The Secretary shall make a grant, or enter into a contract or cooperative agreement, for a national clearinghouse for children and youth with deaf-blindness—

(1) to identify, coordinate, and disseminate information on deaf-blindness, emphasizing information concerning effective practices in working with deaf-blind infants, toddlers, children, and youth;

(2) to interact with educators, professional groups, and parents to identify areas for programming, materials development, training, and expansion of specific services;

(3) to maintain a computerized data base on local, regional, and national resources; and

(4) to respond to information requests from professionals, parents, and members of the community.

(e) In carrying out this section, the Secretary shall take into consideration the availability and quality of existing services for deaf-blind infants, toddlers, children, and youth in the country, and, to the extent practicable, ensure that all parts of the country have an opportunity to receive assistance under this section.

(f) The Secretary may make grants to, or enter into contracts or cooperative agreements with organizations or public or nonprofit private agencies, as determined by the Secretary to be appropriate, to address the needs of children and youth with deaf-blindness, for—

(1) research to identify and meet the full range of special needs of such children and youth; and

(2) the development and demonstration of new, or improvements in existing methods, approaches, or techniques that would contribute to the adjustment and education of children and youth with deaf-blindness.

(20 U.S.C. 1422) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 622, 84 Stat. 182; amended December 2, 1983, P.L. 98–199, sec. 10, 97 Stat. 1364; amended October 8, 1986, P.L. 99–457, sec. 302, 100 Stat. 1160; amended November 7, 1988, P.L. 100–630, sec. 103(c), 102 Stat. 3297; amended October 30, 1990, P.L. 101–476, sec. 302, 104 Stat. 1118–21; amended October 7, 1991, P.L. 102–119, sec. 25(a)(8), 105 Stat. 606.

EARLY EDUCATION FOR CHILDREN WITH DISABILITIES

SEC. 623. (a)(1) The Secretary may arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of experimental, demonstration, and outreach preschool and early intervention programs for children with disabilities, including individuals who are at risk of having substantial developmental delays if early intervention services are not provided, which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special needs of these children. Such programs shall include activities and services designed to—

(A) facilitate the intellectual, emotional, physical, mental, social, speech or other communication mode, language development, and self-help skills of such children,

(B) provide family education and include a parent or their representative of such child, as well as encourage the participation of the parents of such children in the development and operation of any such program,

(C) acquaint the community to be served by any such program with the special needs and potentialities of such children,

(D) offer training about exemplary models and practices, including interdisciplinary models and practices, to State and local personnel who provide services to children with disabilities from birth through age 8 and to the parents of such children,

(E) support the adoption of exemplary models and practices in States and local communities, including the involvement of adult role models with disabilities at all levels of the program,

(F) facilitate and improve the early identification of infants and toddlers with disabilities or those infants and toddlers at risk of having developmental disabilities,

(G) facilitate the transition of infants with disabilities or infants at risk of having developmental delays, from medical care to early intervention services, and the transition from early intervention services to preschool special education or regular education services (especially where the lead agency for early intervention programs under part H is not the State educational agency),

(H) promote the use of assistive technology devices and assistive technology services, where appropriate, to enhance the development of infants and toddlers with disabilities,

(I) facilitate and improve outreach to low-income, minority, rural, and other underserved populations eligible for assistance under parts B and H,

(J) support statewide projects in conjunction with a State's application under part H and a State's plan under part B, to change the delivery of early intervention services to infants and toddlers with disabilities, and to change the delivery of special education and related services to preschool children with disabilities, from segregated to integrated environments, and

(K) increase the understanding of, and address, the early intervention and preschool needs of children exposed prenatally to maternal substance abuse.

(2) Programs authorized by paragraph (1) shall be coordinated with similar programs in the schools operated or supported by State or local educational agencies of the community to be served and with similar programs operated by other public agencies in such community.

(3) As much as is feasible, programs assisted under paragraph (1) shall be geographically dispersed throughout the Nation in urban as well as rural areas.

(4)(A) Except as provided in subparagraph (B), no arrangement under paragraph (1) shall provide for the payment of more than 90 percent of the total annual costs of development, operation, and evaluation of any program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, and services.

(B) The Secretary may waive the requirement of subparagraph (A) in the case of an arrangement entered into under paragraph (1) with governing bodies of Indian tribes located on Federal or State reservations and with consortia of such bodies.

(b) The Secretary shall fund up to 5 grants to States for 3 years for the purpose of establishing an inter-agency, multi-disciplinary, and coordinated statewide system for the identification, tracking, and referral to appropriate services for all categories of children who are biologically and/or environmentally at-risk of having developmental delays. To the extent feasible, such grants shall be geographically dispersed throughout the Nation in urban and rural areas. Each grantee must—

(1) create a data system within the first year to document the numbers and types of at-risk children in the State and that develops linkages with all appropriate existing child data and tracking systems that assist in providing information;

(2) coordinate activities with the child find component required under parts B and H of this Act;

(3) demonstrate the involvement of the lead agency and the State interagency coordinating council under part H as well as the State educational agency under part B;

(4) coordinate with other relevant prevention activities across appropriate service agencies, organizations, councils, and commissions;

(5) define an appropriate service delivery system based on children with various types of at-risk factors;

(6) document the need for additional services as well as barriers; and

(7) disseminate findings and information in the manner prescribed in section 610(g).

(c) The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of a technical assistance development system to assist entities operating experimental, demonstration, and outreach programs and to assist State agencies to expand and improve services provided to children with disabilities. This technical assistance development system shall provide assistance to parents of and advocates for infants, toddlers, and children with disabilities, as well as direct service and administrative personnel involved with such children. Information from the system should be aggressively disseminated through established information networks and other mechanisms to ensure both an impact and benefits at the community level. The Secretary shall ensure that the technical assistance provided under this subsection includes assistance to part H State agencies on procedures for use by primary referral sources in referring a child to the appropriate agency within the system for evaluation, assessment, or service.

(d) The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of early childhood research institutes to carry on sustained research to generate and disseminate new information on preschool and early intervention for children with disabilities and their families. Such institutes shall disseminate this information in the manner prescribed in section 610(g).

(e) The Secretary may make grants to, or enter into contracts or cooperative agreements under this section with, such organizations or institutions, as are determined by the Secretary to be appropriate, for research to identify and meet the full range of special needs of children with disabilities and for training of personnel for programs specifically designed for children with disabilities, including programs to integrate children with disabilities into regular preschool programs.

(f) At least one year before the termination of a grant, contract, or cooperative agreement made or entered into under subsections (c) and (d), the Secretary shall publish in the Federal Register a notice of intent to accept applications for such a grant, contract, or cooperative agreement contingent on the appropriation of sufficient funds by Congress.

(g) For purposes of this section the term "children with disabilities" includes children from birth through eight years of age, including infants and toddlers with disabilities.

(h) The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education and nonprofit private organizations to synthesize the knowledge developed under this section and organize, integrate, and present such knowledge so it can be incorporated and imparted to parents, professionals, and others providing or preparing to provide preschool or early intervention services and to persons designing preschool or early intervention programs.

(20 U.S.C. 1423) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 623, 84 Stat. 183; amended December 2, 1983, P.L. 98–199, sec. 10, 97 Stat. 1365; amended October 8, 1986, P.L. 99–457, sec. 303, 100 Stat. 1161; amended November 7, 1988, P.L. 100–630, sec. 103(d), 102 Stat. 3297; amended October 30, 1990, P.L. 101–476, sec. 303 and 901(b)(100)–(106), 104 Stat. 1121–22, 1146–47; amended October 7, 1991, P.L. 102–119, secs. 8 and 25(a)(9), 105 Stat. 592 and 606.

PROGRAMS FOR CHILDREN WITH SEVERE DISABILITIES

SEC. 624. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, appropriate public agencies and nonprofit organizations to address the special education, related services, early intervention, and integration needs of infants, toddlers, children, and youth with severe disabilities through—

(1) research to identify and meet the full range of special education, related services, and early intervention needs of such children and youth with disabilities, including their need for transportation to and from school,

(2) the development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of such children and youth with disabilities,

(3) training of special and regular education, related services, and early intervention personnel for programs specifically designed for such infants, toddlers, children and youth, including training of regular teachers, instructors, and administrators in strategies (the goal of which is to serve infants, toddlers, children, and youth with disabilities) that include integrated settings for educating such children along side their nondisabled peers,

(4) dissemination of materials and information about practices found effective in working with such children and youth by utilizing existing networks as prescribed in section 610(g), and

(5) statewide projects, in conjunction with the State's plan under part B, to improve the quality of special education and related services for children and youth with severe disabilities, and to change the delivery of those services from segregated to integrated environments.

(b) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public or private nonprofit private agencies, institutions, or organizations for the development and operation of extended school year demonstration programs for infants, toddlers, children, and youth with severe disabilities.

(c) In making grants and entering into contracts and cooperative agreements under subsection (a), the Secretary shall ensure that the activities funded under such grants, contracts, or cooperative agreements will be coordinated with similar activities funded from grants and contracts under other sections of this Act.

(d) To the extent feasible, programs authorized by subsection (a) shall be geographically dispersed throughout the Nation in urban and rural areas.

(e) In awarding such grants and contracts under this section, the Secretary shall include a priority on programs that increase the likelihood that these children and youth will be educated with their nondisabled peers.

(20 U.S.C. 1424) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 624, 84 Stat. 183; amended December 2, 1983, P.L. 98–199, sec. 10, 97 Stat. 1366; amended October 8, 1986, P.L. 99–457, sec. 304, 100 Stat. 1162; amended November 7, 1988, P.L. 100–630, sec. 103(e), 102 Stat. 3297; amended October 30, 1990, P.L. 101–476, secs. 304 and 901(b)(108)–(110), 104 Stat. 1121–22, 1147; amended October 7, 1991, P.L. 102–119, sec. 25(a)(10), 105 Stat. 606.

POSTSECONDARY EDUCATION

SEC. 625. (a)(1) The Secretary may make grants to, or enter into contracts with, State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Such model programs may include joint projects that coordinate with special education and transition services.

(2) In making grants or contracts on a competitive basis under paragraph (1), the Secretary shall give priority consideration to 4 regional centers for the deaf and to model programs for individuals with disabling conditions other than deafness—

(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of individuals with disabilities;

(B) for programs that coordinate, facilitate, and encourage education of individuals with disabilities with their nondisabled peers; and

(C) for outreach activities that include the provision of technical assistance to strengthen efforts in the development, operation, and design of model programs that are adapted to the special needs of individuals with disabilities.

(3) Persons operating programs for persons with disabilities under a grant or contract under paragraph (1) must coordinate their efforts with and disseminate information about their activities to the clearinghouse on postsecondary programs established under section 633(b).

(4) At least one year before the termination of a grant or contract with any of the 4 regional centers for the deaf, the Secretary shall publish in the Federal Register a notice of intent to accept applications for such grant or contract, contingent on the appropriation of sufficient funds by Congress.

(5) To the extent feasible, programs authorized by paragraph (1) shall be geographically dispersed throughout the Nation in urban and rural areas.

(6) Of the sums made available for programs under paragraph (1), not less than $4,000,000 shall first be available for the 4 regional centers for the deaf. The Secretary shall continue to provide assistance through September 30, 1994, to the current grantees operating the four regional centers for the deaf under subsection (a) of this section. The Secretary shall continue to provide such assistance through September 30, 1995, unless the authorization of appropriations for parts C–G of the Act is extended by September 30, 1994.

(b) For purposes of subsection (a), the term "individuals with disabilities" means individuals—

(1) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(2) who, by reason thereof, need special education and related services.

(20 U.S.C. 1424a) Enacted August 21, 1974, P.L. 93–380, sec. 616, 88 Stat. 584; amended December 2, 1983, P.L. 98–199, sec. 10, 97 Stat. 1367; amended October 8, 1986, P.L. 99–457, sec. 305, 100 Stat. 1162; amended November 7, 1988, P.L. 100–630, sec. 103(f), 102 Stat. 3297–3298; amended October 30, 1990, P.L. 101–476, secs. 305 and 901(b)(111)–(116), 104 Stat. 1123, 1147; amended October 16, 1992, P.L. 102–421, sec. 201(a), 106 Stat. 2164.

SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR YOUTH WITH DISABILITIES

SEC. 626. (a) The Secretary may make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act) to—

(1) strengthen and coordinate special education and related services for youth with disabilities currently in school or who recently left school to assist them in the transition to postsecondary education, vocational training, competitive employment (including supported employment), continuing education, independent and community living, or adult services,

(2) stimulate the improvement and development of programs for secondary special education, and

(3) stimulate the improvement of the vocational and life skills of students with disabilities to enable them to be better prepared for transition to adult life and services.

To the extent feasible, such programs shall be geographically dispersed throughout the Nation in urban and rural areas.

(b) Projects assisted under subsection (a) may include—

(1) developing strategies and techniques for transition to independent living, vocational training, vocational rehabilitation, postsecondary education, and competitive employment (including supported employment) for youth with disabilities,

(2) establishing demonstration models for services, programs, and individualized education programs, which emphasize vocational training, independent living, transitional services, and placement for youth with disabilities,

(3) conducting demographic studies which provide information on the numbers, age levels, types of disabling conditions, and services required for youth with disabilities in need of transitional programs,

(4) specially designed vocational programs to increase the potential for competitive employment for youth with disabilities,

(5) research and development projects for exemplary service delivery models and the replication and dissemination of successful models,

(6) initiating cooperative models among educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, and public employment, and employers, which facilitate the planning and developing of transitional services for youth with disabilities to postsecondary education, vocational training, employment, continuing education, and adult services,

(7) developing appropriate procedures for evaluating vocational training, placement, and transitional services for youth with disabilities,

(8) conducting studies which provide information on the numbers, age levels, types of disabling conditions and reasons why some youth with disabilities remain to complete school programs while others drop out,

(9) developing curriculum and instructional techniques in special education and related services that will improve the acquisition of skills by students with disabilities necessary for transition to adult life and services,

(10) specially designed or adapted physical education and therapeutic recreation programs to facilitate the full participation of youths with disabilities in community programs, and

(11) developing and disseminating exemplary programs and practices that meet the unique needs of students who utilize assistive technology devices and assistive technology services as such students make the transition to postsecondary education, vocational training, competitive employment (including supported employment), and continuing education or adult services.

(c) For purposes of paragraphs (1) and (2) of subsection (b), if an applicant is not an educational agency, such applicant shall coordinate its activities with the State educational agency.

(d) Applications for assistance under subsection (a) other than for the purpose of conducting studies or evaluations shall—

(1) describe the procedures to be used for disseminating relevant findings and data to regional resource centers, clearinghouses, and other interested persons, agencies, or organizations,

(2) describe the procedures that will be used for coordinating services among agencies for which youth with disabilities are or will be eligible, and

(3) provide for the direct participation of students with disabilities and the parents of students with disabilities in the planning, development, and implementation of such projects.

(e)(1) The Secretary shall make one-time, 5-year grants, on a competitive basis, to States in which the State vocational rehabilitation agency and State educational agency submit a joint application to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

(2) In the case of a State whose vocational rehabilitation agency does not participate regarding a joint application described in paragraph (1), the Secretary may make a grant under such paragraph to the State if a joint application for the grant is submitted by the State educational agency and one other State agency that provides transition services to individuals who are leaving programs under this Act.

(3) States that receive grants shall use grant funds to:

(A) Increase the availability, access, and quality of transition assistance through the development and improvement of policies, procedures, systems, and other mechanisms for youth with disabilities and their families as such youth prepare for and enter adult life.

(B) Improve the ability of professionals, parents, and advocates to work with such youth in ways that promote the understanding of and the capability to successfully make the transition from "student" to "adult".

(C) Improve working relationships among education personnel, bothwithin LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils (PICS) authorized by the Job Training Partnership Act (JTPA), and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities.

(D) Create an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this section and with other sources.

(4)(A) In order to receive funding under this subsection, a State vocational rehabilitation agency and State educational agency shall describe in their application how they will use the first year, if necessary, to plan how to implement transition services, the second through fourth years to develop and implement transition services, and the fifth year to evaluate transition services. The application shall describe how the grant funds will be used during the planning period and phased out during the evaluation period to ensure the continuation of transition services. Such applications shall also include—

(i) a description of the current availability, access, and quality of transition services for eligible youth and a description of how, over 5 years, the State will improve and expand the availability, access, and quality of transition services for youth with disabilities and their families as such youth prepare for and enter adult life;

(ii) a description of how the State will improve and increase the ability of professionals, parents, and advocates to work with such youth in ways that promote the understanding of and the capability to successfully make the transition from "student" to "adult";

(iii) a description of how the State will improve and increase working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils (PICS) authorized by the JTPA, and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities; and

(iv) a description of how the State will use grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this section and with other sources.

(B) The Secretary shall give preference to those applications that, in addition to clearly addressing the requirements under subparagraph (A), describe how the State will—

(i) target resources to school settings, such as providing access to rehabilitation counselors for students with disabilities who are in school settings;

(ii) target a substantial amount of grant funds, received under this subsection, to case management, program evaluation and documentation of, and dissemination of information about, transition services;

(iii) provide incentives for interagency and private sector resource pooling and otherwise investing in transition services, especially in the form of cooperative agreements, particularly with PICS authorized by the JTPA and local branches of State employment agencies;

(iv) provide for early, ongoing information and training for those involved with or who could be involved with transition services—professionals, parents, youth with disabilities, including self-advocacy training for such youth, and advocates for such youth as well as PICS authorized by the JTPA and local branches of State employment agencies;

(v) provide for the early and direct involvement of all relevant parties, including PICS authorized by the JTPA and local branches of State employment agencies, in operating and planning improvements in transition services, and the early and direct involvement of all relevant parties in planning and implementing transition services for individual youth;

(vi) provide access to training for eligible youth that matches labor market needs in their communities;

(vii) integrate transition services with relevant opportunities in communities, including those sponsored by PICS authorized by the JTPA and local employment agencies;

(viii) use a transition services evaluation plan that is outcome oriented and that focuses on individual youth-focused benefits; and

(ix) ensure that, when appropriate and no later than age 22, eligible youth who participate in transition services under this program would be served as appropriate in the State section 110 and/or title VI, part C program authorized under the Rehabilitation Act of 1973.

(f)(1) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with, such organizations or institutions as are determined by the Secretary to be appropriate for the development or demonstration of new or improvements in existing methods, approaches, or techniques which will contribute to the adjustment and education of children and youth with disabilities and the dissemination of materials and information concerning practices found effective in working with such children and youth. Such organizations and institutions shall disseminate such materials and information as prescribed under section 610(g).

(2) The Secretary shall fund one or more demonstration models designed to establish appropriate methods of providing, or continuing to provide, assistive technology devices and services to secondary school students as they make the transition to vocational rehabilitation, employment, postsecondary education, or adult services. Such demonstration models shall include, as appropriate—

(A) cooperative agreements with the Rehabilitation Services Administration and/or State vocational rehabilitation agencies that ensure continuity of funding for assistive technology devices and services to such students; and

(B) methods for dissemination of exemplary practices that can be adapted or adopted by transitional programs for secondary school students with disabilities.

(3)(A) The Secretary shall award one, five-year cooperative agreement through a separate competition to an institution of higher education, or nonprofit public or private organization. The purpose of this agreement will be to evaluate and document the approaches and outcomes of the projects funded under subsection (e). The results of this agreement shall be disseminated through the appropriate clearinghouses, networks, and through direct communication with Federal, State, and local agencies.

(B) The evaluation carried out pursuant to subparagraph (A) of transition services under subsection (e) shall include an evaluation of—

(i) the outcomes of the transition services provided under such subsection, including the effect of the services regarding postsecondary education, job training, employment, and other appropriate matters;

(ii) the impact of including in the individualized education program a statement of needed transition services (as required under section 602(a)(20)(D));

(iii) the extent to which, in the provision of the transition services, agencies are cooperating effectively, including evaluation of the extent of coordination of the staff of the agencies, of procedures regarding confidentiality, assessment of needs, and referrals, and coordination regarding data bases and training;

(iv) the extent to which obstacles exist regarding cooperation and coordination among agencies in the provision of the transition services, and the extent to which Federal law creates disincentives to such cooperation and coordination; and

(v) the extent to which the transition services have been provided in a cost-effective manner.

(C) The evaluation carried out pursuant to subparagraph (A) shall include recommendations on the manner in which the program under subsection (e) can be improved.

(D) In the annual report required under section 618(g), the Secretary shall include a report of the activities and results associated with the agreement under subparagraph (A).

(g) The Secretary, as appropriate, shall coordinate programs described under subsection (a) with projects developed under section 311 of the Rehabilitation Act of 1973, the Job Training Partnership Act (JTPA), and the Carl D. Perkins Vocational and Applied Technology Education Act.

(20 U.S.C. 1425) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 625, 84 Stat 183; renumbered August 21, 1974, P.L. 93–380, sec. 616, 88 Stat. 584; amended December 2, 1983, P.L. 98–199, sec. 10, 97 Stat. 1367; amended October 8, 1986, P.L. 99–457, sec. 306, 100 Stat. 1163; amended November 7, 1988, P.L. 100–630, sec. 103(g), 102 Stat. 3298; amended October 30, 1990, P.L. 101–476, secs. 306 and 901(b)(120)–(127), 104 Stat. 1124–27, 1147–48; amended October 7, 1991, P.L. 102–119, sec. 25(a)(11), 105 Stat. 606.

PROGRAMS FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE

SEC. 627. (a) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies to establish projects for the purpose of improving special education and related services to children and youth with serious emotional disturbance. Such projects may include—

(1) studies regarding the present state of special education and related services to such children and youth and their families, including information and data to enable assessments of the status of such services over time;

(2) developing methodologies and curricula designed to improve special education and related services for these children and youth;

(3) developing and demonstrating strategies and approaches to reduce the use of out-of-community residential programs and the increased use of school district-based programs (which may include day treatment programs, after-school programs, and summer programs);

(4) developing the knowledge, skills, and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies; or

(5) developing and demonstrating innovative approaches to assist and to prevent children with emotional and behavioral problems from developing serious emotional disturbances that require the provision of special education and related services.

(b)(1) The Secretary is authorized to make grants, on a competitive basis, to local educational agencies in collaboration with mental health entities to provide services for children and youth with serious emotional disturbance. Such demonstration projects shall—

(A) increase the availability, access, and quality of community services for such children and youth and their families;

(B) improve working relationships among education, school, and community mental health and other relevant personnel, families of such children and youth, and their advocates;

(C) target resources to school settings, such as providing access to school and/or community mental health professionals and other community resources for students with serious emotional disturbance who are in community school settings; and

(D) take into account the needs of minority children and youth in all phases of project activity.

(2) Funds received under this subsection may also be used to facilitate interagency and private sector resource pooling to improve services for such children and youth and to provide information and training for those involved with, or who could be involved with, such children and youth.

(c) Each project assisted under this section shall—

(1) apply existing research outcomes from multi-disciplinary fields;

(2) use a grant evaluation plan that is outcome-oriented and that focuses on the benefits to individual children and youth;

(3) report on the effectiveness of such project; and

(4) disseminate the findings of such project, where appropriate, in accordance with section 610(g).

(20 U.S.C. 1426) Enacted October 30, 1990, P.L. 101–476, sec. 307, 104 Stat. 1127–28.

AUTHORIZATION OF APPROPRIATIONS

SEC. 628. (a) There are authorized to be appropriated to carry out section 621 $8,525,000 for fiscal year 1991, $9,300,000 for fiscal year 1992, $10,140,000 for fiscal year 1993, and $11,052,000 for fiscal year 1994.

(b) There are authorized to be appropriated to carry out section 622 $21,900,000 for fiscal year 1991, $24,100,000 for fiscal year

1992, $26,500,000 for fiscal year 1993, and $29,200,000 for fiscal year 1994.

(c) There are authorized to be appropriated to carry out section 623 $31,400,000 for fiscal year 1991, $34,235,000 for fiscal year 1992, $37,325,000 for fiscal year 1993, and $40,705,000 for fiscal year 1994.

(d) There are authorized to be appropriated to carry out section 624 $9,500,000 for fiscal year 1991, $10,500,000 for fiscal year 1992, $11,600,000 for fiscal year 1993, and $12,700,000 for fiscal year 1994.

(e) There are authorized to be appropriated to carry out section 625 $9,470,000 for fiscal year 1991, $10,230,000 for fiscal year 1992, $11,050,000 for fiscal year 1993, and $11,930,000 for fiscal year 1994.

(f) There are authorized to be appropriated to carry out section 626 (except subsection (e)) $9,800,000 for fiscal year 1991, $10,800,000 for fiscal year 1992, $11,900,000 for fiscal year 1993, and $13,050,000 for fiscal year 1994.

(g) There are authorized to be appropriated to carry out section 626(e) $27,500,000 for fiscal year 1991, $30,250,000 for fiscal year 1992, $33,275,000 for fiscal year 1993, and $36,602,000 for fiscal year 1994.

(h) There are authorized to be appropriated to carry out section 627 $6,500,000 for fiscal year 1991, $8,000,000 for fiscal year 1992, $9,500,000 for fiscal year 1993, and $11,500,000 for fiscal year 1994.

(20 U.S.C. 1427) Enacted October 30, 1990, P.L. 101–476, sec. 308, 104 Stat. 1128–29.

PART D—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES

GRANTS FOR PERSONNEL TRAINING

SEC. 631. (a)(1) The Secretary may make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including university affiliated programs and satellite centers participating in programs under part D of the Developmental Disabilities Assistance and Bill of Rights Act) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education, related services, and early intervention, including—

(A) special education teaching, including speech-language pathology and audiology, and adapted physical education and instructional and assistive technology services,

(B) related services to children and youth with disabilities in educational settings, and other settings,

(C) special education and other careers in preschool and early intervention services for infants and toddlers with disabilities,

(D) special education leadership, including supervision and administration (at the advanced graduate, doctoral, and post-doctoral levels), special education research, and special education personnel preparation (at the doctoral and post-doctoral levels), and

(E) training of special education personnel and other personnel providing special services and pre-school and early intervention services for children with disabilities.

(2)(A) The Secretary shall base the award of grants under paragraph (1) on information relating to the present and projected need for special education, related services, early intervention, and other personnel to be trained based on identified State, regional, or national shortages, including the need for personnel in the provision of special education to children of limited English proficiency, and the capacity of the institution or agency to train qualified personnel, and other information considered appropriate by the Secretary.

(B) The Secretary shall ensure that grants are only made under paragraph (1) to applicant agencies and institutions that meet State and professionally recognized standards for the preparation of special education and related services personnel unless the grant is for the purpose of assisting the applicant agency or institution to meet such standards, and that include in their applications a detailed description of strategies that will be utilized to recruit and train members of minority groups and persons with disabilities.

(3) Grants under paragraph (1) may be used by institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary. Such institutions shall give priority consideration in the selection of qualified recipients of fellowships and traineeships to individuals from disadvantaged backgrounds, including minorities and individuals with disabilities who are underrepresented in the teaching profession or in the specializations in which they are being trained.

(4) The Secretary in carrying out paragraph (1) may reserve a sum not to exceed 5 percent of the amount available for paragraph (1) in each fiscal year for contracts to prepare personnel in areas where shortages exist when a response to that need has not been adequately addressed by the grant process.

(5) In making grants under subsection (a)(1), the Secretary may determine that a portion of training supported through such grants shall be conducted on an interdisciplinary basis, and shall be designed to assist special educators in properly coordinating service provision with related services personnel. To the extent feasible, training programs funded under subsection (a)(1)(B) and (a)(1)(E) shall require practica to demonstrate the delivery of related services in an array of regular and special education and community settings.

(6) Nothing in this subsection shall be construed to prevent regular education or special education personnel from benefiting or participating in training activities conducted under this subsection on a preservice or inservice basis.

(7) The Secretary, in carrying out paragraph (1), shall make grants to Historically Black Colleges and Universities, and other institutions of higher education whose minority student enrollment is at least 25 percent.

(8)(A) In making grants under paragraph (1), the Secretary may make grants through a separate competition to institutions of higher education, in partnership with local educational agencies and center schools for students who are deaf, to carry out not less than 4 regional model demonstration training programs on deafness and secondary disabilities.

(B) Such programs shall provide preservice and inservice training to teachers and school administrators, and leadership personnel, in the education of students who are deaf and to related services personnel.

(8)[1] In making grants under paragraph (1), the Secretary may provide for the training or retraining of regular education teachers who are involved in providing instruction to individuals who are deaf, but who are not certified as teachers of such individuals, to meet the communications needs of such individuals.

(b)(1) The Secretary may make grants to institutions of higher education, and other appropriate nonprofit agencies or organizations for the establishment or continuation of educational interpreter training programs to train personnel to effectively meet the various communication needs of elementary and secondary students who are deaf or deaf-blind. To the extent feasible, grants shall be geographically dispersed throughout the Nation in urban and rural areas.

(2) The Secretary may make a grant under paragraph (1) only if the applicant for the grant provides an assurance that all interpreters receiving training under the grant will be provided training designed to develop skills necessary for facilitating effective communication for students who are deaf or deaf-blind.

(3) In making grants under paragraph (1), the Secretary may provide for the training or retraining (including short-term and inservice training) of regular education teachers who are involved in providing instruction to individuals who are deaf, but who are not certified as teachers of such individuals, and other personnel who work with such individuals, on the role of educational interpreters.

(c) The Secretary may make grants to institutions of higher education, State agencies, and other appropriate nonprofit agencies and organizations to develop and demonstrate effective ways for preservice training programs to prepare regular educators to work with children and youth with disabilities and their families; for training teachers to work in community and school settings with school students with disabilities and their families; for inservice and preservice training of personnel to work with infants, toddlers, children, and youth with disabilities and their families; for inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families; for preservice and inservice training of special education and related services personnel in the use of assistive and instructional technology to benefit infants, toddlers, children, and youth with disabilities; and for the recruitment and retention of special education, related services, and early intervention personnel. Both preservice and inservice training shall include a component that addresses the coordination among all service providers, including regular educators.

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[1] Paragraph (8) as added by section 912(a) of P.L. 102-569, 106 Stat. 4486, probably should be repealed or redesignated as paragraph (9).

(d)(1) The Secretary shall fund up to 5 grants to States or entities to support the formation of consortia or partnerships of public and private entities for the purpose of providing opportunities for career advancement and/or competency-based training, including but not limited to, certificate or degree granting programs in special education, related services, and early intervention for current workers at public and private agencies that provide services to infants, toddlers, children, and youth with disabilities. Recipients shall meet the requirements of section 610(g) for the dissemination of information. The purposes for which such a grant may be expended include, but are not limited to, the following:

(A) Establishing a program with colleges and universities to develop creative new programs and coursework options and/or to expand existing programs in the field of special education, related services, or early intervention. Funds may be used to provide release time for faculty and staff for curriculum development, instructional costs, and modest start-up and other program development costs.

(B) Establishing a career development mentoring program using faculty and professional staff members of participating agencies as role models, career sponsors, and academic advisors for experienced State, city, county, and voluntary sector workers who have demonstrated a commitment to working in the above fields and who are enrolled in higher education institution programs relating to these fields.

(C) Supporting a wide range of programmatic and research activities aimed at increasing opportunities for career advancement and competency-based training in the above fields.

(D) Identifying existing public and private agency and labor union personnel policies and benefit programs that may facilitate the ability of workers to take advantage of higher education opportunities such as leave time, tuition reimbursement, etc.

(2) To the extent feasible, projects authorized under paragraph (1) shall be geographically dispersed throughout the Nation in urban and rural areas.

(3) The Secretary shall award, for the purpose of providing technical assistance to States or entities receiving grants under paragraph (1), a cooperative agreement through a separate competition to an entity that has successfully demonstrated the capacity and expertise in the education, training, and retention of workers to serve children and youth with disabilities through the use of consortia or partnerships established for the purpose of retaining the existing workforce and providing opportunities for career enhancement.

(4) The Secretary may conduct an evaluation of projects funded under this subsection.

(5) During the period in which an entity is receiving financial assistance under paragraph (1) or (3), the entity may not receive financial assistance under the other paragraph.

(e)(1) The Secretary may make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of infants, toddlers, children, and youth with disabilities and persons who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of children with disabilities. Such grants shall be designed to meet the unique training and information needs of parents of infants, toddlers, children, and youth with disabilities living in the area to be served by the grant, particularly those who are members of groups that have been traditionally underrepresented.

(2) In order to receive a grant under paragraph (1) a private nonprofit organization shall—

(A) be governed by a board of directors of which a majority of the members are parents of infants, toddlers, children, and youth with disabilities, particularly minority parents, and that includes members who are professionals, especially minority professionals, in the field of special education, early intervention, and related services, and individuals with disabilities, or, if the nonprofit private organization does not have such a board, such organization shall have a membership that represents the interests of individuals with disabilities, and shall establish a special governing committee of which a majority of the members are parents of infants, toddlers, children, and youth with disabilities, particularly parents of minority children, and which includes members who are professionals, especially minority professionals, in the field of special education, early intervention, and related services, to operate the training and information program under paragraph (1), and parent and professional membership of these boards or special governing committees shall be broadly representative of minority and other individuals and groups having an interest in special education, early intervention, and related services;

(B) serve the parents of infants, toddlers, children, and youth with the full range of disabling conditions under such grant program; and

(C) demonstrate the capacity and expertise to conduct effectively the training and information activities for which a grant may be made under paragraph (1), and, for purposes of paragraph (1), network with clearinghouses, including those established under section 633 and other organizations and agencies, and network with other established national, State, and local parent groups representing the full range of parents of infants, toddlers, children, and youth with disabilities, especially parents of minority children.

Nothing in subparagraph (A) shall be construed to authorize or permit the denial to any person of the due process of law required by the United States Constitution.

(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under paragraph (1) shall meet at least once in each calendar quarter to review the parent training and information activities for which the grant is made, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under paragraph (1) for a fiscal year, the board of directors or the special gov-

erning committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(4) The Secretary shall ensure that grants under paragraph (1) will—

(A) be distributed geographically to the greatest extent possible throughout all the States and give priority to grants which involve unserved areas,

(B) be targeted to parents of children with disabilities in both urban and rural areas or on a State or regional basis,

(C) serve parents of minority children with disabilities (including parents served pursuant to paragraph (10)) representative to the proportion of the minority population in the areas being served by requiring that applicants for the grants identify with specificity the special efforts that will be undertaken to involve such parents, including efforts to work with community-based and cultural organizations and the specification of supplementary aids, services, and supports that will be made available, and by specifying budgetary items earmarked to accomplish this subparagraph, and

(D) be funded at a sufficient size, scope, and quality to ensure that the program is adequate to serve the parents in the area.

(5) Parent training and information programs assisted under paragraph (1) shall assist parents to—

(A) better understand the nature and needs of the disabling conditions of children,

(B) provide followup support for educational programs of children with disabilities,

(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals,

(D) participate in educational decisionmaking processes, including the development of the individualized education program for a child with a disability,

(E) obtain appropriate information about the range of options, programs, services, and resources available at the national, State, and local levels to assist infants, toddlers, children, and youth with disabilities and their families, and

(F) understand the provisions for the education of infants, toddlers, children, and youth with disabilities under this Act.

(6) Parent training and information programs may, at a grant recipient's discretion, include State or local educational personnel where such participation will further an objective of the program assisted by the grant.

(7) Each private nonprofit organization operating a program receiving a grant under paragraph (1) shall consult and network with appropriate national, State, regional, and local agencies and organizations, such as protection and advocacy agencies, that serve or assist infants, toddlers, children, and youth with disabilities and their families and are located in the jurisdictions served by the program.

(8) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs.

(9) After the establishment in each State of a parent training and information center, the Secretary shall provide for the establishment of 3 experimental centers to serve large numbers of parents of children with disabilities located in high density areas that do not have such centers and 2 such centers to serve large numbers of parents of children with disabilities located in rural areas.

(10)(A) In the case of a grant under paragraph (1) to a private nonprofit organization for fiscal year 1993 or 1994, the organization, in expending the amounts described in subparagraph (B), shall give priority to providing services under this subsection to parents of children with disabilities aged 0–5.

(B) With respect to a grant under paragraph (1) to a private nonprofit organization for fiscal year 1993 or 1994, the amounts described in this subparagraph are any amounts provided in the grant in excess of the amount of any grant under such paragraph provided to the organization for fiscal year 1992.

(11) Effective for fiscal year 1991 and every year thereafter, the Secretary shall obtain data concerning programs and centers assisted under this subsection on—

(A) the number of parents provided information and training by disability category of their children,

(B) the types and modes of information or training provided,

(C) strategies used to reach and serve parents of minority infants, toddlers, children, and youth with disabilities,

(D) the number of parents served as a result of activities described under subparagraph (C),

(E) activities to network with other information clearinghouses and parent groups as required in subsection (c)(2)(C),

(F) the number of agencies and organizations consulted with at the national, State, regional, and local levels, and

(G) the number of parents served under this subsection who are parents of children with disabilities aged 0–5.

The Secretary shall include a summary of this information in the annual report to Congress as required in section 618(g).

(20 U.S.C. 1431) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 631, 84 Stat. 184; amended December 2, 1983, P.L. 98–199, sec. 11, 97 Stat. 1369; amended October 8, 1986, P.L. 99–457, sec. 308, 100 Stat. 1165; amended November 7, 1988, P.L. 100–630, sec. 104(b), 102 Stat. 3298; amended October 30, 1990, P.L. 101–476, sec. 401, 901(b)(129)–(142), 104 Stat. 1129, 1148; amended October 7, 1991, P.L. 102–119, secs. 9(a),(b) and 25(a)(12), 105 Stat. 593 and 606; amended October 16, 1992, P.L. 102–421, sec. 202, 106 Stat. 2165.

GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS FOR TRAINEESHIPS

SEC. 632. (a) The Secretary shall make a grant of sufficient size and scope to each State educational agency for the purposes described in subsection (c) and, in any State in which the State educational agency does not apply for such a grant, to an institution of higher education within such State for such purposes.

(b) The Secretary may also make a limited number of grants to State educational agencies on a competitive basis for the purposes described in subsection (c). In any fiscal year, the Secretary may not expend for purposes of this subsection an amount that exceeds 10 percent of the amount expended for purposes of this section in the preceding fiscal year.

(c) Grants made under this section shall be for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare special and regular education, related services and early intervention personnel to meet the needs of infants, toddlers, children, and youth with disabilities or supervisors of such persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development under section 613 and under section 676(b)(8), and to assist the State in developing and maintaining such systems and conducting personnel recruitment and retention activities.

(d) The Secretary is authorized to provide directly or by grant, contract, or cooperative agreement, technical assistance to State educational agencies on matters pertaining to the effective implementation of section 613(a)(3).

(20 U.S.C. 1432) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 632, 84 Stat. 184; amended December 2, 1983, P.L. 98–199, sec. 11, 97 Stat. 1371; amended October 8, 1986, P.L. 99–457, sec. 309, 100 Stat. 1168; amended November 7, 1988, P.L. 100–630, sec. 104(c), 102 Stat. 3298–9; amended October 30, 1990, P.L. 101–476, sec. 402, 901(b)(143), 104 Stat. 1132, 1148.

Note: Section 104(d) of Public Law 100–630 (102 Stat. 3299) provides that notwithstanding section 632 of the Education of the Handicapped Act, "the Secretary of Education may make continuation grants for the fiscal year 1989 to institutions of higher education that received competitive grants for the fiscal year 1987".

CLEARINGHOUSES

SEC. 633. (a) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public agencies or private nonprofit organizations or institutions for the establishment of three national clearinghouses: on children and youth with disabilities; on postsecondary education for individuals with disabilities; and on careers in special education, to—

(1) collect, develop, and disseminate information,

(2) provide technical assistance,

(3) conduct coordinated outreach activities,

(4) provide for the coordination and networking with other relevant national, State, and local organizations and information and referral resources,

(5) respond to individuals and organizations seeking information, and

(6) provide for the synthesis of information for its effective utilization by parents, professionals, individuals with disabilities, and other interested parties.

(b) The national clearinghouse for children and youth with disabilities shall:

(1) Collect and disseminate information (including the development of materials) on characteristics of infants, toddlers, children, and youth with disabilities and on programs, legislation, and services relating to their education under this Act and other Federal laws.

(2) Participate in programs and services related to disability issues for providing outreach, technical assistance, collec-

tion, and dissemination of information; and promoting networking of individuals with appropriate national, State, and local agencies and organizations.

(3) Establish a coordinated network and conduct outreach activities with relevant Federal, State, and local organizations and other sources for promoting public awareness of disability issues and the availability of information, programs, and services.

(4) Collect, disseminate, and develop information on current and future national, Federal, regional, and State needs for providing information to parents, professionals, individuals with disabilities, and other interested parties relating to the education and related services of individuals with disabilities.

(5) Provide technical assistance to national, Federal, regional, State and local agencies and organizations seeking to establish information and referral services for individuals with disabilities and their families.

(6) In carrying out the activities in this subsection, the clearinghouse will include strategies to disseminate information to underrepresented groups such as those with limited English proficiency.

(c) The national clearinghouse on postsecondary education for individuals with disabilities shall:

(1) Collect and disseminate information nationally on characteristics of individuals entering and participating in education and training programs after high school; legislation affecting such individuals and such programs; policies, procedures, and support services, as well as adaptations, and other resources available or recommended to facilitate the education of individuals with disabilities; available programs and services that include, or can be adapted to include, individuals with disabilities; and sources of financial aid for the education and training of individuals with disabilities.

(2) Identify areas of need for additional information.

(3) Develop new materials (in both print and nonprint form), especially by synthesizing information from a variety of fields affecting disability issues and the education, rehabilitation, and retraining of individuals with disabilities.

(4) Develop a coordinated network of professionals, related organizations and associations, mass media, other clearinghouses, and governmental agencies at the Federal, regional, State, and local level for the purposes of disseminating information and promoting awareness of issues relevant to the education of individuals with disabilities after high school and referring individuals who request information to local resources.

(5) Respond to requests from individuals with disabilities, their parents, and professionals who work with them, for information that will enable them to make appropriate decisions about postsecondary education and training.

(d) The national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of children and youth with disabilities shall:

(1) Collect and disseminate information on current and future national, regional, and State needs for special education and related services personnel.

(2) Disseminate information to high school counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

(3) Identify training programs available around the country.

(4) Establish a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

(5) Provide technical assistance to institutions seeking to meet State and professionally recognized standards.

(e)(1) In awarding grants, contracts, and cooperative agreements under this section, the Secretary shall give priority consideration to any applicant with demonstrated, proven effectiveness (at the national level) in performing the functions established in this section; and with the ability to conduct such projects, communicate with intended consumers of information, and maintain the necessary communication with national, regional, State, and local agencies and organizations.

(2) In awarding grants, contracts, and cooperative agreements under this section, the Secretary shall give priority consideration to any applicant with demonstrated, proven effectiveness (at the national level) in providing informational services to minorities and minority organizations.

(f)(1) Beginning in fiscal year 1991, and for each year thereafter, the Secretary shall obtain information on each project assisted under this section, including—

(A) the number of individuals served by disability category, as appropriate, including parents, professionals, students, and individuals with disabilities;

(B) a description of responses utilized;

(C) a listing of new products developed and disseminated; and

(D) a description of strategies and activities utilized for outreach to urban and rural areas with populations of minorities and underrepresented groups.

(2) A summary of the data required by this subsection shall be included in the annual report to Congress required under section 618.

(20 U.S.C. 1433) Enacted October 30, 1990, P.L. 101–476, sec. 403, 104 Stat. 1133.

REPORTS TO THE SECRETARY

SEC. 634. (a) Not more than sixty days after the end of any fiscal year, each recipient of a grant or contract under this part during such fiscal year shall prepare and submit a report to the Secretary. Each such report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

(1) the number of individuals trained under the grant or contract, by category of training and level of training;

(2) the number of individuals trained under the grant or contract receiving degrees and certification, by category and level of training; and

(3) information described in section 631(d)(11) and section 633(f)(1), as applicable.

(b) A summary of the data required by this section shall be included in the annual report of the Secretary under section 618 of this Act.

(20 U.S.C. 1434) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 634, 84 Stat. 185; amended December 2, 1983, P.L. 98–199, sec. 11, 97 Stat. 1372; amended October 30, 1990, P.L. 101–476, sec. 404, 104 Stat. 1135; amended October 7, 1991, P.L. 102–119, sec. 9(c), 105 Stat. 595.

AUTHORIZATION OF APPROPRIATIONS

[1]Sec. 635. (a)(1) There are authorized to be appropriated to carry out this part (other than sections 631(a)(7), 631(d), and 633) $94,725,000 for fiscal year 1991, $103,255,000 for fiscal year 1992, $113,580,000 for fiscal year 1993, and $123,760,000 for fiscal year 1994.

(2) There are authorized to be appropriated to carry out section 631(a)(7) $19,250,000 for fiscal year 1991, $21,175,000 for fiscal year 1992, $23,292,500 for fiscal year 1993, and $25,621,750 for fiscal year 1994.

(3) There are authorized to be appropriated to carry out section 631(d) $11,000,000 for fiscal year 1991, $15,100,000 for fiscal year 1992, $16,300,000 for fiscal year 1993, and $17,600,000 for fiscal year 1994.

(4) There are authorized to be appropriated to carry out section 633 $2,900,000 for fiscal year 1991, $2,465,000 for fiscal year 1992, $2,710,000 for fiscal year 1993, and $2,960,000 for fiscal year 1994.

(b) Of the funds appropriated pursuant to subsection (a) for any fiscal year, the Secretary shall reserve not less than 65 per centum for activities described in subparagraphs (A) through (E) of section 631(a)(1).

(20 U.S.C. 1435) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 635, 84 Stat. 185; amended December 2, 1983, P.L. 98–199, sec. 11, 97 Stat. 1372; amended October 8, 1986, P.L. 99–457, sec. 311, 100 Stat. 1169; amended October 30, 1990, P.L. 101–476, sec. 405, 104 Stat. 1135; amended October 7, 1991, P.L. 102–119, secs. 9(c)(2), 10, and 25(a)(13), 105 Stat. 595 and 606.

Part E—Research in the Education of Handicapped Individuals

RESEARCH AND RELATED ACTIVITIES

Sec. 641. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, other public agencies and nonprofit private organizations for the purpose of advancing and improving the knowledge base and improving the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children and youth with disabilities in regular education environments, to provide such children effective instruction and enable them to successfully learn. The activities supported under this section shall support innovation, development, exchange, and use of such advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities. In carrying out this section, the Secretary may support a wide range of research and related activities designed to—

(1) advance knowledge regarding the provision of instruction and other interventions to infants, toddlers, children, and youth with disabilities including—

(A) the organization, synthesis, and interpretation of current knowledge and the identification of knowledge gaps;

(B) the identification of knowledge and skill competencies needed by personnel providing special education, related services, and early intervention services;

(C) the improvement of knowledge regarding the developmental and learning characteristics of infants, toddlers, children, and youth with disabilities in order to improve the design and effectiveness of interventions and instruction;

(D) the evaluation of approaches and interventions;

(E) the development of instructional strategies, techniques, and activities;

(F) the improvement of curricula and instructional tools such as textbooks, media, materials, and technology;

(G) the development of assessment techniques, instruments (including tests, inventories, and scales), and strategies for measurement of progress and the identification, location, and evaluation of infants, toddlers, children, and youth with disabilities for the purpose of determining eligibility, program planning, and placement for special education, related services, and early intervention services. Particular attention should be given to the development of alternative assessment procedures and processes for minority individuals and those with limited English proficiency;

(H) the testing of research findings in practice settings to determine the application, usability, effectiveness, and generalizability of such research findings;

(I) the improvement of knowledge regarding families, minorities, limited English proficiency, and disabling conditions; and

(J) the identification of environmental, organizational, resource, and other conditions necessary for effective professional practice; and

(2) advance the use of knowledge by personnel providing special education, related services, and early intervention services including—

(A) the improvement of knowledge regarding how such individuals learn new knowledge and skills, and strategies for effectively facilitating such learning in preservice, inservice, and continuing education;

(B) the organization, integration, and presentation of knowledge so that such knowledge can be incorporated and imparted in personnel preparation, continuing education programs, and other relevant training and communication vehicles; and

(C) the expansion and improvement of networks that exchange knowledge and practice information.

(b) In carrying out subsection (a), the Secretary shall consider the special education, related services, or early intervention and research experience of applicants.

(c) The Secretary shall publish proposed priorities under this part in the Federal Register not later than 12 months preceding the fiscal year for which they are being announced, and shall allow a period of 60 days for public comments and suggestions. The Secretary shall, after analyzing and considering the public comments, publish final priorities in the Federal Register not later than 90 days after the close of the comment period.

(d) The Secretary shall provide an index (including the title of each project and the name and address of the funded organization) of all projects conducted under this part in the prior fiscal year in the annual report described under section 618.

(e) The Secretary shall—

(1) coordinate the priorities established under subsection (b) with research priorities established by the National Institute for Disability and Rehabilitation Research and other appropriate agencies conducting research pertaining to the education of individuals with disabilities; and

(2) provide information concerning priorities established under subsection (b) to the National Council on Disability and to the Bureau of Indian Affairs Advisory Committee for Exceptional Children.

(f)(1) The Secretary shall make grants or enter into contracts or cooperative agreements for the establishment of a center or centers designed to organize, synthesize, and disseminate current knowledge relating to children with attention deficit disorder with respect to the following:

(A) Assessment techniques, instruments, and strategies used for identification, location, evaluation and for measurement of progress.

(B) Knowledge and skill competencies needed by professionals providing special and regular education and related services.

(C) Environmental, organizational, resource, and other conditions necessary for effective professional practice.

(D) Developmental and learning characteristics.

(E) Instructional strategies, techniques, and activities.

(F) Curricula and instructional tools such as textbooks, media, materials, and technology.

(G) Strategies, techniques, and activities related to involvement of families.

(2) In awarding grants, contracts, and cooperative agreements under paragraph (1), the Secretary shall give priority consideration to applicants with—

(A) demonstrated knowledge concerning the disorder;

(B) proven effectiveness in performing the functions established in this subsection; and

(C) the ability to—

(i) conduct such projects;

(ii) communicate with intended consumers of information; and

(iii) maintain the necessary communication with national, regional, State, and local agencies.

(g)(1) The Secretary shall make grants, or enter into contracts or cooperative agreements, for the establishment of model demonstration programs, of which some will be school-based models, that provide the services of an ombudsman to assist in resolving problems that are barriers to appropriate educational, related services, or other services for children and youth with disabilities.

(2) Programs under paragraph (1) shall provide or identify personnel to assist children and youth with disabilities, their parents or guardians, special and regular education teachers, State and local education administrators, and related services personnel to resolve problems in a timely manner through dispute mediation and other methods, notwithstanding due process procedures, in order to further the delivery of appropriate education and related services. Participation in this program does not preclude or delay due process under part B of this Act.

(3) Ombudsman services for programs under paragraph (1) shall be provided by social workers, parent advocates, psychologists, and persons with similar qualifications designated by the Secretary.

(h)(1) The Secretary may make grants to institutions of higher education, in partnership with other appropriate agencies and organizations such as local educational agencies and center schools for students who are deaf, to—

(A) conduct research in the unique needs of children and youth, including minority children and youth, with disabilities;

(B) develop and evaluate specialized instructional methods, materials, curricula, and technologies for use with such children and youth; and

(C) develop and evaluate assessment techniques, instruments, and strategies used to identify, evaluate, and measure the progress of such children and youth.

(2) Each grantee under this subsection shall provide for the meaningful involvement in its project of parents and family members and adult role models.

(20 U.S.C. 1441) Enacted October 30, 1990, P.L. 101–476, sec. 501, 104 Stat. 1135–38; amended October 16, 1992, P.L. 102–421, sec. 203, 106 Stat. 2165.

RESEARCH AND DEMONSTRATION PROJECTS IN PHYSICAL EDUCATION AND RECREATION FOR CHILDREN WITH DISABILITIES

SEC. 642. The Secretary is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for children with disabilities, including therapeutic recreation, and to conduct research, surveys, or demonstrations relating to physical education or recreation for children with disabilities, including therapeutic recreation.

(20 U.S.C. 1442) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 642, 84 Stat. 185; amended December 2, 1983, P.L. 98–199, sec. 12, 97 Stat. 1373; amended October 30, 1990, P.L. 101–476, sec. 502, 104 Stat. 1138; amended October 7, 1991, P.L. 102–119, sec. 25(a)(14), 105 Stat. 606.

AUTHORIZATION OF APPROPRIATIONS

SEC. 643. (a) For purposes of carrying out this part, there are authorized to be appropriated $21,100,000 for fiscal year 1990, $24,650,000 for fiscal year 1991, $27,400,000 for fiscal year 1992, $30,200,000 for fiscal year 1993, and $33,200,000 for fiscal year 1994.

(20. U.S.C. 1443) Enacted October 30, 1990, P.L. 101–476, sec. 504, 104 Stat. 1138.

PART F—INSTRUCTIONAL MEDIA FOR INDIVIDUALS WITH DISABILITIES

PURPOSES

SEC. 651. The purposes of this part are to promote—

(1) the general welfare of deaf and hard of hearing individuals by—

(A) bringing to such individuals understanding and appreciation of those films and television programs that play such an important part in the general and cultural advancement of hearing individuals;

(B) providing through these films and television programs enriched educational and cultural experiences through which deaf and hard of hearing individuals can be brought into better touch with the realities of their environment; and

(C) providing a wholesome and rewarding experience that deaf and hard of hearing individuals may share together; and

(2) the educational advancement of individuals with disabilities by—

(A) carrying on research in the use of educational media for individuals with disabilities;

(B) producing and distributing educational media for the use of individuals with disabilities, their parents, their actual or potential employers, and other individuals directly involved in work for the advancement of individuals with disabilities;

(C) training individuals in the use of educational media for the instruction of individuals with disabilities; and

(D) utilizing educational media to help eliminate illiteracy among individuals with disabilities; [1]

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[1] So in law. Probably should be an "and" after the semicolon. P.L. 101–476, sec. 601(3), 104 Stat. 1139, provided that sec. 651 is amended by striking the period at the end of paragraph (2) and inserting "; and". This amendment could not be executed due to an earlier amendment

Continued

(3) the general welfare of visually impaired individuals by—

(A) bringing to such individuals an understanding and appreciation of textbooks, films, television programs, video material, and other educational publications and materials that play such an important part in the general and cultural advancement of visually unimpaired individuals; and

(B) ensuring access to television programming and other video materials.

(20 U.S.C. 1451) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 651, 84 Stat. 186; amended November 7, 1988, P.L. 100–630, sec. 106(f), 102 Stat. 3300; amended October 30, 1990, P.L. 101–476, sec. 601; 901(b)(150), 104 Stat. 1138, 1149.

CAPTIONED FILMS, TELEVISION, DESCRIPTIVE VIDEO, AND EDUCATIONAL MEDIA FOR HANDICAPPED INDIVIDUALS

SEC. 652. (a) The Secretary shall establish a loan service of captioned films, descriptive video and educational media for the purpose of making such materials available, in accordance with regulations, in the United States for nonprofit purposes to individuals with disabilities, parents of individuals with disabilities, and other individuals directly involved in activities for the advancement of individuals with disabilities, including for the purpose of addressing problems of illiteracy among individuals with disabilities.

(b) The Secretary is authorized to—

(1) acquire films (or rights thereto) and other educational media by purchase, lease, or gift;

(2) acquire by lease or purchase equipment necessary for the administration of this part;

(3) provide, by grant or contract, for the captioning for deaf and hard of hearing individuals and video description for the visually impaired, of films, television programs, and video materials;

(4) provide, by grant or contract, for the distribution of captioned and video-described films, video materials, and other educational media and equipment through State schools for handicapped individuals, public libraries, and such other agencies or entities as the Secretary may deem appropriate to serve as local or regional centers for such distribution;

(5) provide, by grant or contract, for the conduct of research in the use of educational and training films and other educational media for individuals with disabilities, for the production and distribution of educational and training films and other educational media for individuals with disabilities and the training of individuals in the use of such films and media, including the payment to those individuals of such stipends (including allowances for travel and other expenses of such individuals and their dependents) as the Secretary may determine, which shall be consistent with prevailing practices under comparable federally supported programs;

(6) utilize the facilities and services of other governmental agencies;

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made by P.L. 101–476, sec. 601(2), which resulted in a semicolon being at the end of paragraph (2).

(7) accept gifts, contributions, and voluntary and uncompensated services of individuals and organizations; and

(8) provide by grant or contract for educational media and materials for deaf and hard of hearing individuals.

(c) The Secretary may make grants to or enter into contracts or cooperative agreements with the National Theatre of the Deaf, Inc. and other appropriate non-profit organizations for the purpose of providing cultural experiences to—

(1) enrich the lives of deaf and hard of hearing children and adults,

(2) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard of hearing individuals, and

(3) promote the integration of hearing and deaf and hard of hearing individuals through shared cultural, educational, and social experiences.

(d)(1) The Secretary is authorized to make a grant or enter into a contract for the purpose of providing current, free textbooks and other educational publications and materials to blind and other print-handicapped students in elementary, secondary, postsecondary, and graduate schools and other institutions of higher education through the medium of transcribed tapes and cassettes.

(2) For the purpose of this subsection, the term "print-handicapped" refers to any individual who is blind or severely visually impaired, or who, by reason of a physical or perceptual disability, is unable to read printed material unassisted.

(20 U.S.C. 1452) Enacted April 13, 1970, P.L. 91–230, Title VI, sec. 652, 84 Stat. 186; amended August 21, 1974, P.L. 93–380, sec. 620, 88 Stat. 685; amended October 12, 1976, P.L. 94–482, Title V, Part A, sec. 501(h), 90 Stat. 2237; amended October 8, 1986, P.L. 99–457, sec. 315, 100 Stat. 1171; amended November 7, 1988, P.L. 100–630, sec. 106(c), 102 Stat. 3300–3301; amended October 30, 1990, P.L. 101–476, secs. 602 and 901(b) (151) and (152), 104 Stat. 1139, 1149.

AUTHORIZATION OF APPROPRIATIONS

SEC. 653. For the purpose of carrying out section 652 there are authorized to be appropriated $20,010,000 for fiscal year 1991, $22,010,000 for fiscal year 1992, $24,200,000 for fiscal year 1993, and $26,600,000 for fiscal year 1994.

(20 U.S.C. 1454) Enacted October 30, 1990, P.L. 101–476, sec. 603, 104 Stat. 1140.

PART G—TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR INDIVIDUALS WITH DISABILITIES

FINANCIAL ASSISTANCE

SEC. 661. (a) The Secretary may make grants or enter into contracts or cooperative agreements with institutions of higher education, State and local educational agencies, or other appropriate agencies and organizations for the purpose of advancing the use of new technology, media, and materials in the education of students with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities. In carrying out this section, the Secretary may fund projects or centers for the purposes of—

(1) determining how technology, assistive technology, media, and materials are being used in the education of individuals with disabilities and how they can be used most effectively, efficiently, and appropriately,

(2) designing and adapting technology, assistive technology, media, and materials to improve the education of students with disabilities,

(3) assisting the public and private sectors in the development and marketing of technology, assistive technology, media, and materials for the education of individuals with disabilities,

(4) disseminating information on the availability and use of technology, assistive technology, media, and materials for the education of individuals with disabilities, where appropriate, to entities described in section 610(g),

(5) increasing access to and use of assistive technology devices and assistive technology services in the education of infants, toddlers, children, and youth with disabilities, and other activities authorized under the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as such Act relates to the education of students with disabilities, and

(6) examining how these purposes can address the problem of illiteracy among individuals with disabilities.

(b)(1) With respect to new technology, media, and materials utilized with funds under this part to improve the education of students with disabilities, the Secretary shall make efforts to ensure that such instructional materials are closed captioned.

(2) The Secretary may not award a grant, contract, or cooperative agreement under paragraphs (1) through (4) of subsection (a) unless the applicant for such assistance agrees that activities carried out with the assistance will be coordinated, as appropriate, with the State entity receiving funds under title I of the Technology–Related Assistance for Individuals with Disabilities Act of 1988.

(20 U.S.C. 1461) Enacted October 8, 1986, P.L. 99–457, sec. 317, 100 Stat. 1171; amended November 7, 1988, P.L. 100–630, sec. 107(b), 102 Stat. 3301; amended October 30, 1990, P.L. 101–476, sec. 701 and 901(b)(154)–(156), 104 Stat. 1140, 1149; amended October 7, 1991, P.L. 102–119, sec. 25(a)(15), 105 Stat. 606.

AUTHORIZATION OF APPROPRIATIONS

SEC. 662. For the purpose of carrying out this part, there are authorized to be appropriated $11,900,000 for fiscal year 1991, $12,860,000 for fiscal year 1992, $13,890,000 for fiscal year 1993, and $15,000,000 for fiscal year 1994.

(20 U.S.C. 1462) Enacted October 8, 1986, P.L. 99–457, sec. 317, 100 Stat. 1171; amended October 30, 1990, P.L. 101–476, sec. 702, 104 Stat. 1141.

PART H—INFANTS AND TODDLERS WITH DISABILITIES

FINDINGS AND POLICY

SEC. 671. (a) FINDINGS.—The Congress finds that there is an urgent and substantial need—

(1) to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay,

(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age,

(3) to minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independent living in society,

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities, and

(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with disabilities and their families,

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families.

(20 U.S.C. 1471) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1145; amended November 7, 1988, P.L. 100–630, sec. 108(a), 102 Stat. 3301; amended October 30, 1990, P.L. 101–476, sec. 901(b)(158)–(161); amended October 7, 1991, P.L. 102–119, secs. 11 and 25(a)(16), 105 Stat. 595 and 606.

DEFINITIONS

SEC. 672. As used in this part—

(1) The term "infants and toddlers with disabilities" means individuals from birth to age 2, inclusive, who need early intervention services because they—

(A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development (hereafter in this part referred to as "communication development"), psychosocial development (hereafter in this part referred to as "social or emotional development"), or self-help skills (hereafter in this part referred to as "adaptive development"), or

(B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

Such term may also include, at a State's discretion, individuals from birth to age 2, inclusive, who are at risk of having substantial developmental delays if early intervention services are not provided.

(2) The term "early intervention services" are developmental services which—

(A) are provided under public supervision,

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees,

(C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

(i) physical development,

(ii) cognitive development,

(iii) communication development,

(iv) social or emotional development, or

(v) adaptive development,

(D) meet the standards of the State, including the requirements of this part,

(E) include—

(i) family training, counseling, and home visits,

(ii) special instruction,

(iii) speech pathology and audiology,

(iv) occupational therapy,

(v) physical therapy,

(vi) psychological services,

(vii) case management services (hereafter in this part referred to as "service coordination services"),

(viii) medical services only for diagnostic or evaluation purposes,

(ix) early identification, screening, and assessment services,

(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services,

(xi) social work services,

(xii) vision services,

(xiii) assistive technology devices and assistive technology services, and

(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive early intervention services,

(F) are provided by qualified personnel, including—

(i) special educators,

(ii) speech and language pathologists and audiologists,

(iii) occupational therapists,

(iv) physical therapists,

(v) psychologists,

(vi) social workers,
(vii) nurses,
(viii) nutritionists,
(ix) family therapists,
(x) orientation and mobility specialists, and
(xi) pediatricians and other physicians,

(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate, and

(H) are provided in conformity with an individualized family service plan adopted in accordance with section 677.

(3) The term "developmental delay" has the meaning given such term by a State under section 676(b)(1).

(4) The term "Council" means the State Interagency Coordinating Council established under section 682.

(20 U.S.C. 1472) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1146; amended November 7, 1988, P.L. 100–630, sec. 108(b), 102 Stat. 3301; amended October 30, 1990, P.L. 101–476, secs. 801 and 901(b)(162)–(163), 104 Stat. 1141, 1149; amended October 7, 1991, P.L. 102–119, sec. 12, 105 Stat. 595.

GENERAL AUTHORITY

SEC. 673. The Secretary shall, in accordance with this part, make grants to States (from their allocations under section 684) to assist each State to develop a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

(20 U.S.C. 1473) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1147; amended P.L. 101–476, October 30, 1990, sec. 901(b)(164), 104 Stat. 1150.

GENERAL ELIGIBILITY

SEC. 674. In order to be eligible for a grant under section 673 for any fiscal year, a State shall demonstrate to the Secretary (in its application under section 678) that the State has established a State Interagency Coordinating Council which meets the requirements of section 682.

(20 U.S.C. 1474) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1147.

CONTINUING ELIGIBILITY

SEC. 675. (a) FIRST TWO YEARS.—In order to be eligible for a grant under section 673 for the first or second year of a State's participation under this part, a State shall include in its application under section 678 for that year an assurance that funds received under section 673 shall be used to assist the State to plan, develop, and implement the statewide system required by section 676.

(b) THIRD AND FOURTH YEAR.—(1) In order to be eligible for a grant under section 673 for the third or fourth year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that—

(A) the State has adopted a policy which incorporates all of the components of a statewide system in accordance with section 676 or obtained a waiver from the Secretary under paragraph (2),

(B) funds shall be used to plan, develop, and implement the statewide system required by section 676, and

(C) such statewide system will be in effect no later than the beginning of the fourth year of the State's participation under section 673, except that in order to comply with section 676(b)(4), a State need only conduct multidisciplinary assessments, develop individualized family service plans, and make available case management services.

(2) Notwithstanding paragraph (1), the Secretary may permit a State to continue to receive assistance under section 673 during such third year even if the State has not adopted the policy required by paragraph (1)(A) before receiving assistance if the State demonstrates in its application—

(A) that the State has made a good faith effort to adopt such a policy,

(B) the reasons why it was unable to meet the timeline and the steps remaining before such a policy will be adopted, and

(C) an assurance that the policy will be adopted and go into effect before the fourth year of such assistance.

(c) FIFTH AND SUCCEEDING YEARS.—In order to be eligible for a grant under section 673 for a fifth and any succeeding year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that the State has in effect the statewide system required by section 676 and a description of services to be provided under section 676(b)(2).

(d) EXCEPTION.—Notwithstanding subsections (a) and (b), a State which has in effect a State law, enacted before September 1, 1986, that requires the provision of free appropriate public education to children with disabilities from birth through age 2, inclusive, shall be eligible for a grant under section 673 for the first through fourth years of a State's participation under this part.

(e) DIFFERENTIAL FUNDING FOR FOURTH OR FIFTH YEAR.—

(1) IN GENERAL.—Notwithstanding any other provision of this part, a State shall be eligible for a grant under section 673 for fiscal years 1990, 1991, or 1992 if—

(A) the State satisfies the eligibility criteria described in subsection (b)(1) pertaining to the State's third or fourth year of participation under this part; and

(B) the Governor, on behalf of the State, submits, by a date that the Secretary may establish for each such year, a request for extended participation, including—

(i) information demonstrating to the Secretary's satisfaction that the State is experiencing significant hardships in meeting the requirements of this section for the fourth or fifth year of participation; and

(ii) a plan, including timelines, for meeting the eligibility criteria described in subsections (b)(1) and (c) for the fourth, fifth, or succeeding years of participation.

(2) APPROVAL OF REQUEST.—

(A) FIRST YEAR.—The Secretary shall approve a State's request for a first year of extended participation under this subsection if the State meets the requirements of paragraph (1).

(B) SECOND YEAR.—The Secretary shall approve a State's request for a second year of extended participation under this subsection if the State—

(i) meets the requirements of paragraph (1); and

(ii) demonstrates to the Secretary's satisfaction that the State has made reasonable progress in implementing the plan described in paragraph (1)(B)(ii).

(3) DURATION.—The Secretary may not approve more than two requests from the same State for extended participation under this subsection.

(4) PAYMENT.—

(A) FISCAL YEAR 1990.—Notwithstanding any other provision of law, each State qualifying for extended participation under this subsection for fiscal year 1990 shall receive a payment under this part in an amount equal to such State's payment under this part for fiscal year 1989.

(B) FISCAL YEAR 1991 OR 1992.—Except as provided in subparagraph (C) and notwithstanding any other provision of law, each State qualifying for extended participation under this subsection for fiscal year 1991 or fiscal year 1992 shall receive a payment under this part for such fiscal years in an amount equal to the payment such State would have received under this part for fiscal year 1990 if such State had met the criteria for the fourth year of participation described in subsection (b)(1).

(C) MINIMUM PAYMENT FOR FISCAL YEAR 1991 OR 1992 FOR CERTAIN STATES.—Notwithstanding any other provision of law, each State qualifying for extended participation under this subsection for fiscal year 1991 or fiscal year 1992 shall receive a payment under this part of not less than $500,000. For purposes of the preceding sentence, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) REALLOTMENT.—

(A) FISCAL YEAR 1990.—The amount by which the allotment computed under section 684 for any State for fiscal year 1990 exceeds the amount that such State may be allotted under paragraph (4)(A) of this subsection (and, notwithstanding section 684(d), any fiscal year 1990 funds allotted to any State that such State elects not to receive) shall be reallotted, notwithstanding the percentage limitations set forth in sections 684 (a) and (b), among those States satisfying the eligibility criteria of subsection (b)(1) for the fourth year of participation that have submitted an application by a date that the Secretary may establish in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year.

(B) FISCAL YEAR 1991 OR 1992.—The amount by which a State's allotment computed under section 684 for any State for fiscal years 1991 or 1992 exceeds the amount that such State may be allotted for such fiscal year under paragraph (4)(B) of this subsection shall be reallotted, notwithstanding the percentage limitations set forth in section 684 (a) and (b)—

(i) first, among those States satisfying the eligibility criteria of subsection (c) for the fifth year of participation that have submitted applications by a date that the Secretary may establish for each such year in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year, except that no such State, by operation of this clause, shall receive an increase of more than 100 percent over the amount such State would have otherwise received under section 684 for the previous fiscal year;

(ii) second, if funds remain, among those States that have—

(I) satisfied the eligibility criteria of subsection (b)(1) for the fourth year of participation;

(II) qualified for extended participation under this subsection; and

(III) not received a reallotment payment under clause (i),

in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year, except that no State, by operation of this clause, shall receive a reallotment payment that is larger than the payment such State would otherwise have received under section 684 for such year; and

(iii) third, if funds remain, among those States satisfying the eligibility criteria of subsection (c) for the fifth year of participation that did not receive a reallotment payment under clause (ii) in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year.

(6) DEFINITIONS.—For the purpose of this subsection, the term "State", except as provided in paragraph (4)(C), means—

(A) each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;

(B) each of the jurisdictions listed in section 684(a); and

(C) the Department of the Interior.

(20 U.S.C. 1475) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1147; amended November 7, 1988, P.L. 100–630, sec. 108(c), 102 Stat. 3301; amended October 30, 1990, P.L. 101–476, sec. 901(b)(165), 104 Stat. 1150; amended June 6, 1991, P.L. 102–52, sec. 10, 105 Stat. 263; amended October 7, 1991, P.L. 102–119, sec. 19(c), 105 Stat. 601.

REQUIREMENTS FOR STATEWIDE SYSTEM

Sec. 676. (a) In General.—A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities on reservations, shall include the minimum components under subsection (b).

(b) Minimum Components.—The statewide system required by subsection (a) shall include, at a minimum—

(1) a definition of the term "developmentally delayed" that will be used by the State in carrying out programs under this part,

(2) timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with disabilities in the State, including Indian infants and toddlers with disabilities on reservations, before the beginning of the fifth year of a State's participation under this part,

(3) a timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler with a disability in the State and the needs of the families to appropriately assist in the development of the infant or toddler with a disability,

(4) for each infant and toddler with a disability in the State, an individualized family service plan in accordance with section 677, including service coordination services in accordance with such service plan,

(5) a comprehensive child find system, consistent with part B of this Act, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources,

(6) a public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency to all primary referral sources of information materials for parents on the availability of early intervention services, and procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate information on the availability of early intervention services to parents of infants with disabilities,

(7) a central directory which includes early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State,

(8) a comprehensive system of personnel development, including the training of paraprofessionals and the training of

primary referral sources respecting the basic components of early intervention services available in the State, that is consistent with the comprehensive system of personnel development described in section 613(a)(3) and that may include—

(A) implementing innovative strategies and activities for the recruitment and retention of early intervention service providers,

(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part,

(C) training personnel to work in rural areas, and

(D) training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program under this part to a preschool program under section 619 of part B.

(9) a single line of responsibility in a lead agency designated or established by the Governor for carrying out—

(A) the general administration and supervision of programs and activities receiving assistance under section 673, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 673, to ensure that the State complies with this part,

(B) the identification and coordination of all available resources within the State from Federal, State, local and private sources,

(C) the assignment of financial responsibility in accordance with section 678(a)(2) to the appropriate agencies,

(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner pending the resolution of any disputes among public agencies or service providers,

(E) the resolution of intra- and interagency disputes, and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination,

(10) a policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements,

(11) a procedure for securing timely reimbursement of funds used under this part in accordance with section 681(a),

(12) procedural safeguards with respect to programs under this part as required by section 680,

(13) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel nec-

essary to carry out this part are appropriately and adequately prepared and trained, including—

(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, and

(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State, and

(14) a system for compiling data on the numbers of infants and toddlers with disabilities and their families in the State in need of appropriate early intervention services (which may be based on a sampling of data), the numbers of such infants and toddlers and their families served, the types of services provided (which may be based on a sampling of data), and other information required by the Secretary.

(20 U.S.C. 1476) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1148; amended November 7, 1988, P.L. 100–630, sec. 108(d), 102 Stat. 3301; amended October 30, 1990, P.L. 101–476, sec. 901(b)(166)–(173), 104 Stat. 1150; amended October 7, 1991, P.L. 102–119, secs. 13, 19(a)(2), and 25(a)(17), 105 Stat. 596, 601, and 606.

INDIVIDUALIZED FAMILY SERVICE PLAN

SEC. 677. (a) ASSESSMENT AND PROGRAM DEVELOPMENT.—Each infant or toddler with a disability and the infant's or toddler's family shall receive—

(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs,

(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability, and

(3) a written individualized family service plan developed by a multidisciplinary team, including the parent or guardian, as required by subsection (d).

(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parent's consent, early intervention services may commence prior to the completion of such assessment.

(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication

development, social or emotional development, and adaptive development, based on acceptable objective criteria,

(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability,

(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary,

(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services,

(5) a statement of the natural environments in which early intervention services shall appropriately be provided,

(6) the projected dates for initiation of services and the anticipated duration of such services,

(7) the name of the case manager (hereafter in this part referred to as the "service coordinator") from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, and

(8) the steps to be taken supporting the transition of the toddler with a disability to services provided under part B of this Act to the extent such services are considered appropriate.

(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents or guardian and informed written consent from such parents or guardian shall be obtained prior to the provision of early intervention services described in such plan. If such parents or guardian do not provide such consent with respect to a particular early intervention service, then the early intervention services to which such consent is obtained shall be provided.

(20 U.S.C. 1477) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1149; amended November 7, 1988, P.L. 100–630, sec. 108(f), 102 Stat. 3302; amended October 30, 1990, P.L. 101–476, sec. 901(b)(174)–(176), 104 Stat. 1150; amended October 7, 1991, P.L. 102–119, sec. 14, 105 Stat. 597.

STATE APPLICATION AND ASSURANCES

SEC. 678. (a) APPLICATION.—Any State desiring to receive a grant under section 673 for any year shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require by regulation. Such an application shall contain—

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 673,

(2) a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies,

(3) information demonstrating eligibility of the State under section 674,

(4) the information or assurances required to demonstrate eligibility of the State for the particular year of participation under section 675,

(5)(A) information demonstrating that the State has provided (i) public hearings, (ii) adequate notice of such hearings, and (iii) an opportunity for comment to the general public before the submission of such application and before the adoption by the State of the policies described in such application, and (B) a summary of the public comments and the State's responses,

(6) a description of the uses for which funds will be expended in accordance with this part and, for the fifth and succeeding fiscal years, a description of the services to be provided,

(7) a description of the procedure used to ensure an equitable distribution of resources made available under this part among all geographic areas within the State,

(8) a description of the policies and procedures used to ensure a smooth transition for individuals participating in the early intervention program under this part who are eligible for participation in preschool programs under part B, including a description of how the families will be included in the transitional plans and how the lead agency under this part will notify the appropriate local educational agency or intermediate educational unit in which the child resides and convene, with the approval of the family, a conference between the lead agency, the family, and such agency or unit at least 90 days before such child is eligible for the preschool program under part B in accordance with State law, and to review the child's program options, for the period commencing on the day a child turns 3 running through the remainder of the school year, and to establish a transition plan, and

(9) such other information and assurances as the Secretary may reasonably require by regulation.

(b) STATEMENT OF ASSURANCES.—Any State desiring to receive a grant under section 673 shall file with the Secretary a statement at such time and in such manner as the Secretary may reasonably require by regulation. Such statement shall—

(1) assure that funds paid to the State under section 673 will be expended in accordance with this part,

(2) contain assurances that the State will comply with the requirements of section 681,

(3) provide satisfactory assurance that the control of funds provided under section 673, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property,

(4) provide for (A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and

verification of such reports and proper disbursement of Federal funds under this part,

(5) provide satisfactory assurance that Federal funds made available under section 673 (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant such State and local funds,

(6) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under section 673 to the State,

(7) beginning in fiscal year 1992, provide satisfactory assurance that policies and practices have been adopted to ensure meaningful involvement of traditionally underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part and to ensure that such families have access to culturally competent services within their local areas, and

(8) such other information and assurances as the Secretary may reasonably require by regulation.

(c) APPROVAL OF APPLICATION AND ASSURANCES REQUIRED.—No State may receive a grant under section 673 unless the Secretary has approved the application and statement of assurances of that State. The Secretary shall not disapprove such an application or statement of assurances unless the Secretary determines, after notice and opportunity for a hearing, that the application or statement of assurances fails to comply with the requirements of this section.

(20 U.S.C. 1478) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1150; amended November 7, 1988, P.L. 100–630, sec. 108(g), 102 Stat. 3302; amended October 30, 1990, sec. 901(b)(177), P.L. 101–476, 104 Stat. 1150; amended October 7, 1991, P.L. 102–119, sec. 15, 105 Stat. 597.

USES OF FUNDS

SEC. 679. In addition to using funds provided under section 673 to plan, develop, and implement the statewide system required by section 676, a State may use such funds—

(1) for direct services for infants and toddlers with disabilities and their families that are not otherwise provided from other public or private sources,

(2) to expand and improve on services for infants and toddlers with disabilities and their families that are otherwise available, and

(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year.

(20 U.S.C. 1479) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1151; amended November 7, 1988, P.L. 100–630, sec. 108(h), 102 Stat. 3302; amend-

ed October 30, 1990, P.L. 101–476, sec. 901(b)(178), 104 Stat. 1150; amended October 7, 1991, P.L. 102–119, sec. 16, 105 Stat. 598.

PROCEDURAL SAFEGUARDS

SEC. 680. The procedural safeguards required to be included in a statewide system under section 676(b)(12) shall provide, at a minimum, the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information, including the right of parents or guardians to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

(3) The right of the parents or guardian to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

(4) The opportunity for parents or a guardian to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(5) Procedures to protect the rights of the infant or toddler with a disability whenever the parents or guardian of the child are not known or unavailable or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State agency providing services) to act as a surrogate for the parents or guardian.

(6) Written prior notice to the parents or guardian of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the infant or toddler with a disability.

(7) Procedures designed to assure that the notice required by paragraph (6) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(8) During the pendency of any proceeding or action involving a complaint, unless the State agency and the parents or guardian otherwise agree, the child shall continue to receive the appropriate early intervention services currently being pro-

vided or, if applying for initial services, shall receive the services not in dispute.

(20 U.S.C. 1480) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1152; amended November 7, 1988, P.L. 100–630, sec. 108(i), 102 Stat. 3302; amended October 30, 1990, P.L. 101–476, sec. 901(b) (179), (180), 104 Stat. 1150; amended October 7, 1991, P.L. 102–119, sec. 17, 105 Stat. 598.

PAYOR OF LAST RESORT

SEC. 681. (a) NONSUBSTITUTION.—Funds provided under section 673 may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, funds provided under section 673 may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility for the payment.

(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

(20 U.S.C. 1481) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1152; amended November 7, 1988, P.L. 100–630, sec. 108(j), 102 Stat. 3302; amended October 30, 1990, P.L. 101–476, 104 Stat. 1150.

STATE INTERAGENCY COORDINATING COUNCIL

SEC. 682. (a) ESTABLISHMENT.—(1) Any State which desires to receive financial assistance under section 673 shall establish a State Interagency Coordinating Council composed of at least 15 members but not more than 25 members, unless the State provides sufficient justification for a greater number of members in the application submitted pursuant to section 678.

(2) The Council shall be appointed by the Governor. In making appointments to the Council, the Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(3) The Governor shall designate a member of the Council to serve as the chairperson of the Council, or shall require the Council to so designate such a member. Any member of the Council who is a representative of the lead agency designated under section 676(b)(9) may not serve as the chairperson of the Council.

(b) COMPOSITION.—(1) The Council shall be composed as follows:

(A) At least 20 percent of the members shall be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

(B) At least 20 percent of the members shall be public or private providers of early intervention services.

(C) At least one member shall be from the State legislature.

(D) At least one member shall be involved in personnel preparation.

(E) At least one member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

(F) At least one member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

(G) At least one member shall be from the agency responsible for the State governance of insurance, especially in the area of health insurance.

(2) The Council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA operated or funded school, from the Indian Health Service or the tribe/tribal council.

(c) MEETINGS.—The Council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the Council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives), to pay compensation to a member of the Council if such member is not employed or must forfeit wages from other employment when performing official Council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

(e) FUNCTIONS OF COUNCIL.—(1) The Council shall—

(A) advise and assist the lead agency designated or established under section 676(b)(9) in the performance of the responsibilities set out in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements,

(B) advise and assist the lead agency in the preparation of applications and amendments thereto,

(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to services provided under part B, to the extent such services are appropriate, and

(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

(2) The Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to 5, inclusive.

(f) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

(g) USE OF EXISTING COUNCILS.—To the extent that a State has established a Council before September 1, 1986, that is comparable to the Council described in this section, such Council shall be considered to be in compliance with this section. Within 4 years after the date the State accepts funds under section 673, such State shall establish a council that complies in full with this section.

(20 U.S.C. 1482) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1153; amended November 7, 1988, P.L. 100–630, sec. 108(k), 102 Stat. 3302; amended October 30, 1990, P.L. 101–476, sec. 901(b)(182), 104 Stat. 1150; amended October 7, 1991, P.L. 102–119, secs. 18 and 25(a)(18), 105 Stat. 599 and 606.

FEDERAL ADMINISTRATION

SEC. 683. Sections 616, 617, and 620 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

(1) any reference to a State educational agency shall be deemed to be a reference to the State agency established or designated under section 676(b)(9),

(2) any reference to the education of children with disabilities and the education of all children with disabilities and the provision of free public education to all children with disabilities shall be deemed to be a reference to the provision of services to infants and toddlers with disabilities in accordance with this part, and

(3) any reference to local educational agencies and intermediate educational agencies shall be deemed to be a reference to local service providers under this part.

(20 U.S.C. 1483) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1154; amended October 30, 1990, P.L. 101–476, sec. 901(b) (183), (184), 104 Stat. 1151.

ALLOCATION OF FUNDS

SEC. 684. (a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

(b)(1) The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortium of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for that fiscal year.

(2) The Secretary of the Interior shall distribute the total amount of the 1.25 percent under paragraph (1) in the following manner:

(A) For the first fiscal year, each tribe or tribal organization shall receive an amount proportionate to the amount of weighted student units for special education programs for BIA operated or funded schools serving such reservation generated under the formula established under section 1128 of the Education Amendments of 1978, divided by the total number of such students in all BIA operated or funded schools.

(B) For each fiscal year thereafter, each tribe or tribal organization shall receive an amount based on the number of infants and toddlers residing on the reservation as determined annually divided by the total of such children served by all tribes or tribal organizations.

(3) To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as are needed to determine the amounts to be allocated under paragraph (2).

(4) The funds received by a tribe or tribal organization shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children aged 0-2, inclusive, and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe and tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(5) To be eligible to receive a grant pursuant to paragraph (2), the tribe or tribal organization shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(f)(3)(D) of this Act. The Secretary of Education may require any additional information from the Secretary of the Interior.

(6) None of the funds under this subsection can be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(c)(1) For each of the fiscal years 1987 through 1994 from the funds remaining after the reservation and payments under subsections (a) and (b), the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States, except that no State shall receive less than 0.5 percent of such remainder, or $500,000, whichever is greater.

(2) For the purpose of paragraph (1)—

(A) the terms "infants" and "toddlers" mean children from birth to age 2, inclusive, and

(B) the term "State" does not include the jurisdictions described in subsection (a).

(d) If any State elects not to receive its allotment under subsection (c)(1), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

(20 U.S.C. 1484) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1154; amended October 30, 1990, P.L. 101–476, sec. 901(b)(185), 104 Stat. 1151; amended October 7, 1991, P.L. 102–119, sec. 19(a)(1) and (b), 105 Stat. 600 and 601.

FEDERAL INTERAGENCY COORDINATING COUNCIL

SEC. 685. (a) ESTABLISHMENT AND PURPOSE.—

(1) IN GENERAL.—The Secretary shall establish a Federal Interagency Coordinating Council in order to—

(A) minimize duplication of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families, and preschool services for children with disabilities, across Federal, State, and local agencies;

(B) ensure the effective coordination of Federal early intervention and preschool programs and policies across Federal agencies;

(C) coordinate the provision of Federal technical assistance and support activities to States;

(D) identify gaps in Federal agency programs and services; and

(E) identify barriers to Federal interagency cooperation.

(2) APPOINTMENTS.—The council established under paragraph (1) (hereafter in this section referred to as the "Council") and the chairperson of the Council shall be appointed by the Secretary in consultation with other appropriate Federal agencies. In making the appointments, the Secretary shall ensure that each member has sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program that such member represents.

(b) COMPOSITION.—The Council shall be composed of—

(1) a representative of the Office of Special Education Programs;

(2) a representative of the National Institute on Disability and Rehabilitation Research;

(3) a representative of the Maternal and Child Health Services Block Grant Program;

(4) a representative of programs assisted under the Developmental Disabilities Assistance and Bill of Rights Act;

(5) a representative of the Health Care Financing Administration;

(6) a representative of the Division of Birth Defects and Developmental Disabilities of the Centers for Disease Control;

(7) a representative of the Social Security Administration;

(8) a representative of the Special Supplemental Food Program for Women, Infants and Children of the Department of Agriculture;

(9) a representative of the National Institute of Mental Health;

(10) a representative of the National Institute of Child Health and Human Development;

(11) a representative of the Bureau of Indian Affairs of the Department of the Interior;

(12) a representative of the Indian Health Service;

(13) a representative of the Surgeon General;

(14) a representative of the Department of Defense;

(15) a representative of the Administration for Children and Families;

(16) a representative of the Alcohol, Drug Abuse and Mental Health Administration[1];

(17) a representative of the Pediatric Aids Health Care Demonstration Program in the Public Health Service;

(18) at least 3 parents of children with disabilities age 12 or under, of whom at least one must have a child with a disability under the age of 6;

(19) at least 2 representatives of State lead agencies for early intervention services to infants and toddlers, one of which must be a representative of a State educational agency and the other a representative of a noneducational agency;

(20) other members representing appropriate agencies involved in the provision of, or payment for, early intervention services and special education and related services to infants and toddlers with disabilities and their families and preschool children with disabilities; and

(21) other persons appointed by the Secretary.

(c) MEETINGS.—The Council shall meet at least quarterly and in such places as the Council deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) FUNCTIONS OF THE COUNCIL.—The Council shall—

(1) advise and assist the Secretary in the performance of the Secretary's responsibilities described in this part;

(2) conduct policy analyses of Federal programs related to the provision of early intervention services and special educational and related services to infants and toddlers with disabilities and their families, and preschool children with disabilities, in order to determine areas of conflict, overlap, duplication, or inappropriate omission;

(3) identify strategies to address issues described in paragraph (2);

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[1] Section 161 of P.L. 102-321 (106 Stat. 375) provides that any references to the Alcohol, Drug Abuse and Mental Health Administration shall be deemed to refer to the Substance Abuse and Mental Health Services Administration.

(4) develop and recommend joint policy memoranda concerning effective interagency collaboration, including modifications to regulations, and the elimination of barriers to interagency programs and activities;

(5) coordinate technical assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention programming for infants and toddlers with disabilities and their families and preschool children with disabilities; and

(6) facilitate activities in support of States' interagency coordination efforts.

(e) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under Federal law.

(20 U.S.C. 1484a) Enacted October 7, 1991, P.L. 102–119, sec. 21(2), 105 Stat. 602.

AUTHORIZATION OF APPROPRIATIONS

SEC. 686. There are authorized to be appropriated to carry out this part $220,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.

(20 U.S.C. 1485) Enacted October 8, 1986, P.L. 99–457, sec. 101(a), 100 Stat. 1155; amended October 7, 1991, P.L. 102–119, secs. 20 and 21(1), 105 Stat. 602.

Education of the Deaf Act of 1986

AN ACT To authorize quality educational programs for individuals who are deaf, to foster improved educational programs for individuals who are deaf throughout the United States, to reenact and codify certain provisions of law relating to the education of individuals who are deaf, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Education of the Deaf Act of 1986".

(20 U.S.C. 4301 note) Enacted August 4, 1986, P.L. 99–371, 100 Stat. 781.

TITLE I—GALLAUDET UNIVERSITY; NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

PART A—GALLAUDET UNIVERSITY

SEC. 101. CONTINUATION OF GALLAUDET COLLEGE AS GALLAUDET UNIVERSITY.

(a) GALLAUDET UNIVERSITY.—The Gallaudet College created by an Act entitled "An Act to amend the charter of the Columbia Institution for the Deaf, change its name, define its corporate powers, and provide for its organization and administration, and for other purposes", approved June 18, 1954, is continued as a body corporate under the name of Gallaudet University. Hereafter Gallaudet College shall be known as Gallaudet University and have perpetual succession and shall have the powers and be subject to the limitations contained in this Act.

(b) PURPOSE.—The purpose of Gallaudet University shall be to provide education and training to individuals who are deaf and otherwise to further the education of individuals who are deaf.

(20 U.S.C. 4301) Enacted August 4, 1986, P.L. 99–371, sec. 101, 100 Stat. 781.

SEC. 102. PROPERTY RIGHTS.

(a) PROPERTY RIGHTS DESCRIBED.—Gallaudet University is vested with all the property and the rights of property, and shall have and be entitled to use all authority, privileges, and possessions and all legal rights which it has, or which it had or exercised under any former name, including the right to sue and be sued and to own, acquire, sell, mortgage, or otherwise dispose of property it may own now or hereafter acquire. Gallaudet University shall also be subject to all liabilities and obligations now outstanding against the corporation under any former name.

(b) DISPOSAL OF REAL PROPERTY.—(1) With the approval of the Secretary of Education, the Board of Trustees of Gallaudet University may convey fee simple title by deed, convey by quitclaim deed, mortgage, or otherwise dispose of any or all real property title to which is vested in Gallaudet University, Gallaudet College, the Columbia Institution for the Deaf, or any predecessor corporation.

(2) The proceeds of any such disposition shall be considered a part of the capital structure of the corporation, and may be used solely for the acquisition of real estate for the use of the corporation, for the construction, equipment, or improvement of buildings for such use, or for investment purposes, but if invested only the income from the investment may be used for current expenses of the corporation.

(20 U.S.C. 4302) Enacted August 4, 1986, P.L. 99–371, sec. 102, 100 Stat. 781–782.

SEC. 103. BOARD OF TRUSTEES.

(a) COMPOSITION OF THE BOARD.—(1) Gallaudet University shall be under the direction and control of a Board of Trustees, composed of twenty-one members selected as follows:

(A) three public members of whom (i) one shall be a United States Senator appointed by the President of the Senate, and (ii) two shall be Representatives appointed by the Speaker of the House of Representatives; and

(B) eighteen other members, all of whom shall be elected by the Board of Trustees and of whom one shall be elected pursuant to regulations of the Board of Trustees, on nomination by the Gallaudet University Alumni Association for a term of three years.

The members appointed from the Senate and House of Representatives shall be appointed for a term of two years at the beginning of each Congress, shall be eligible for reappointment, and shall serve until their successors are appointed.

(2) The Board of Trustees shall have the power to fill any vacancy in the membership of the Board except for public members. Nine trustees shall constitute a quorum to transact business. The Board of Trustees, by vote of a majority of its membership, is authorized to remove any member of their body (except the public members) who may refuse or neglect to discharge the duties of a trustee, or whose removal would, in the judgment of said majority, be to the interest and welfare of said corporation.

(b) POWERS OF THE BOARD.—The Board of Trustees is authorized to—

(1) make such rules, policies, regulations, and bylaws, not inconsistent with the Constitution and laws of the United States, as may be necessary for the good government of Gallaudet University, for the management of the property and funds of such corporation (including the construction of buildings and other facilities) and for the admission, instruction, care, and discharge of students;

(2) provide for the adoption of a corporate seal and for its use;

(3) fix the date of holding their annual and other meetings;

(4) appoint a president and establish policies, guidelines, and procedures related to the appointments, the salaries, and the dismissals of professors, instructors, and other employees of Gallaudet University, including the adoption of a policy of outreach and recruitment to employ and advance in employ-

ment qualified individuals with disabilities, particularly individuals who are deaf or individuals who are hard of hearing.[1]

(5) elect a chairperson and other officers and prescribe their duties and terms of office, and appoint an executive committee to consist of five members, and vest the committee with such of its powers during periods between meetings of the Board as the Board deems necessary;

(6) establish such schools, departments, and other units as the Board of Trustees deems necessary to carry out the purpose of Gallaudet University;

(7) confer such degrees and marks of honor as are conferred by colleges and universities generally, and issue such diplomas and certificates of graduation as, in its opinion, may be deemed advisable, and consistent with academic standards;

(8) subject to the provisions of section 203, control expenditures of all moneys appropriated by Congress for the benefit of Gallaudet University; and

(9) control the expenditure and investment of any moneys or funds or property which Gallaudet University may have or may receive from sources other than appropriations by Congress.

(20 U.S.C. 4303) Enacted August 4, 1986, P.L. 99–371, sec. 103, 100 Stat. 782–783; amended October 16, 1992, P.L.102–421, secs. 101(c), 111, 106 Stat. 2152.

SEC. 104. ELEMENTARY AND SECONDARY EDUCATIONAL PROGRAMS.

(a) GENERAL AUTHORITY.—(1)(A) The Board of Trustees of Gallaudet University is authorized, in accordance with the agreement under section 105, to maintain and operate exemplary elementary and secondary education programs, projects, and activities for the primary purpose of developing, evaluating, and disseminating innovative curricula, instructional techniques and strategies, and materials that can be used in various educational environments serving individuals who are deaf and individuals who are hard of hearing throughout the Nation.

(B) The elementary and secondary programs described in subparagraph (A) shall serve students with a broad spectrum of needs, including students who are lower achieving academically, who come from non-English speaking homes, who have secondary disabilities, who are members of minority groups, or who are from rural areas.

(C) The elementary and secondary programs described in subparagraph (A) shall include—

(i) the Kendall Demonstration Elementary School, to provide day facilities for elementary education for individuals who are deaf, to provide such individuals with the vocational, transitional, independent living, and related services they need to function independently, and to prepare such individuals for high school and other secondary study; and

(ii) the Model Secondary School for the Deaf, to provide day and residential facilities for secondary education for individuals who are deaf, to provide such individuals with the vocational, transitional, independent living, and related services they need to function independently, and to prepare such individuals for college, other postsecondary opportunities, or the workplace.

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[1] So in law. Probably should be a semicolon.

(2) The Model Secondary School for the Deaf may provide residential facilities for students enrolled in the school—

(A) who live beyond a reasonable commuting distance from the school; or

(B) for whom such residency is necessary for them to receive a free appropriate public education within the meaning of part B of the Individuals with Disabilities Education Act.

(b) ADMINISTRATIVE REQUIREMENTS.—(1) The elementary and secondary education programs shall—

(A) provide technical assistance and outreach throughout the Nation to meet the training and information needs of parents of infants and children who are deaf or hard of hearing;

(B) provide technical assistance and training to personnel for use in teaching (i) students who are deaf or hard of hearing, in various educational environments, and (ii) students who are deaf or hard of hearing with a broad spectrum of needs as described in subsection (a); and

(C) establish and publish priorities for research, development, and demonstration through a process that allows for public input;

(2) To the extent possible, the elementary and secondary education programs shall provide the services required under paragraph (1) in an equitable manner, based on the national distribution of students who are deaf or hard of hearing in educational environments as determined by the Secretary for purposes of section 618(b) of the Individuals with Disabilities Education Act. Such educational environments shall include—

(A) regular classes;

(B) resource rooms;

(C) separate classes;

(D) separate, public or private, nonresidential schools; and

(E) separate, public or private, residential schools and homebound or hospital environments.

(3) If a local educational agency, intermediate educational unit, or State educational agency refers a child to, or places a child in, one of the elementary or secondary education programs to meet its obligation to make available a free appropriate public education under part B of the Individuals with Disabilities Education Act, the agency or unit shall be responsible for ensuring that the special education and related services provided to the child by the education program are in accordance with part B of that Act and that the child is provided the rights and procedural safeguards under section 615 of that Act.

(4) If the parents or guardian places a child in one of the elementary or secondary education programs, the University shall—

(A) notify the appropriate local educational agency, intermediate educational unit, or State educational agency of that child's attendance in the programs;

(B) work with local educational agencies, intermediate educational units, and State educational agencies, where appropriate, to ensure a smooth transfer of students to and from those programs; and

(C) provide the child a free appropriate public education in accordance with part B of the Individuals with Disabilities Education Act and procedural safeguards in accordance with the following provisions of section 615 of such Act:

(i) Subparagraphs (A), (C), (D), and (E) of paragraph (1) of subsection (b), and paragraph (2) of such subsection.

(ii) Subsection (d), except the portion of paragraph (4) requiring that findings and decisions be transmitted to a State advisory panel.

(iii) Paragraphs (1) through (3) of subsection (e). Paragraph (3) of such subsection is not applicable to decisions by the University to refuse to admit or to dismiss a child, except that, before dismissing any child, the University shall give at least 60 days notice to the child's parents and to the local educational agency in which the child resides.

(iv) Subsection (f).

(20 U.S.C. 4034) Enacted October 16, 1992, P.L. 102–421, sec.112, 106 Stat. 2152.

SEC. 105. AGREEMENT WITH GALLAUDET UNIVERSITY.

(a) General Authority.—The Secretary and Gallaudet University shall establish, within 1 year after enactment of the Education of the Deaf Act Amendments of 1992, a new agreement governing the operation and national mission activities, including construction and provision of equipment, of the elementary and secondary education programs at the University. The Secretary and the University shall periodically update the agreement as determined to be necessary by the Secretary or the University.

(b) Provisions of Agreement.—The agreement shall—

(1) provide that Federal funds appropriated for the benefit of the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf will be used only for the purposes for which appropriated and in accordance with the applicable provisions of this Act and such agreement;

(2) provide that the University shall make an annual report, to be part of the report required under section 204, to the Secretary on the operations and national mission activities of the elementary and secondary education programs, including such other information as the Secretary may consider necessary;

(3) provide that in the design and construction of any facilities, maximum attention will be given to innovative auditory and visual devices and installations appropriate for the educational functions of such facilities;

(4) provide that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by Federal funds appropriated for the benefit of the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a–276a–5) commonly referred to as the Davis-Bacon Act; and the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set

forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c); and

(5) include such other conditions as the Secretary or the University considers necessary to carry out the purposes of this part.

(20 U.S.C. 4305) Enacted October 16, 1992, P.L. 102–421, sec. 113, 106 Stat. 2154.

Part B—National Technical Institute for the Deaf

SEC. 111. AUTHORITY.

For the purpose of providing a residential facility for postsecondary technical training and education for individuals who are deaf in order to prepare them for successful employment, the institution of higher education with which the Secretary has an agreement under this title is authorized to operate and maintain a National Technical Institute for the Deaf.[1]

(20 U.S.C. 4331) Enacted August 4, 1986, P.L. 99–371, sec. 201, 100 Stat. 784–785.

SEC. 112. AGREEMENT FOR THE INSTITUTE.

(a) General Authority.—(1) The Secretary is authorized to establish or continue an agreement with an institution of higher education for the establishment and operation, including construction and equipment, of a National Technical Institute for the Deaf. The Secretary, in considering proposals from institutions of higher education to enter into an agreement under this Act, shall give preference to institutions which are located in metropolitan industrial areas.

(2) The Secretary, and the institution of higher education with which the Secretary has an agreement under this section, shall, within 1 year after the enactment of the Education of the Deaf Act Amendments of 1992, assess the need for modification of the agreement. The Secretary and the institution of higher education with which the Secretary has an agreement under this section shall also periodically update the agreement as determined to be necessary by the Secretary or the institution.

(b) Provisions of Agreement.—The agreement shall—

(1) provide that Federal funds appropriated for the benefit of the Institute will be used only for the purposes for which appropriated and in accordance with the applicable provisions of this Act and the agreement made pursuant thereto;

(2) provide that the Board of Trustees or other governing body of the institution, subject to the approval of the Secretary, will appoint an advisory group to advise the Director of the Institute in formulating and carrying out the basic policies governing its establishment and operation, which group shall include individuals who are professionally concerned with education and technical training at the postsecondary school level, persons who are professionally concerned with activities relating to education and training of individuals who are deaf, and

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[1] Public Law 100–202 (101 Stat. 1329–281) and Public Law 100–436 (102 Stat. 1706) each provide in part that "none of the funds provided herein may be used to subsidize the tuition of foreign students".

members of the public familiar with the need for services provided by the Institute;

(3) provide that the Board of Trustees or other governing body of the institution will prepare and submit to the Secretary an annual report, including an accounting of all indirect costs paid to the institution of higher education under the agreement with the Secretary, which report the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, with such comments and recommendations as the Secretary may deem appropriate;

(4) include such other conditions as the Secretary deems necessary to carry out the purposes of this part; and [1]

(5) provide that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by Federal funds appropriated for the benefit of the Institute will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a–276a–5) commonly referred to as the Davis-Bacon Act; and the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c). [2]

(6) establish a policy of outreach and recruitment to employ and advance in employment qualified individuals with disabilities, particularly individuals who are deaf or individuals who are hard of hearing.

(c) LIMITATION.—If within twenty years after the completion of any construction (except minor remodeling or alteration) for which such funds have been paid—

(1) the facility ceases to be used for the purposes for which it was constructed or the agreement is terminated, unless the Secretary determines that there is good cause for releasing the institution from its obligation, or

(2) the institution ceases to be the owner of the facility,

the United States shall be entitled to recover from the applicant or other owner of the facility an amount which has the same ratio with respect to the current market value of the facility as the amount of Federal funds expended for construction of such facility bears to the total cost of construction of the facility. The current market value of the facility shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

(20 U.S.C. 4332) Enacted August 4, 1986, P.L. 99–371, sec. 202, 100 Stat. 785–786; amended October 16, 1992, P.L. 102–421, sec. 121, 106 Stat.2155.

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[1] So in law. The word "and" at the end should probably be striken.

[2] So in law. The period at the end should probably be striken and insert in lieu thereof "; and".

TITLE II—GENERAL PROVISIONS

SEC. 201. DEFINITIONS.

As used in this Act—

(1) The term "international student" means an individual who—

(A) is not a citizen or national of, or lawfully admitted for permanent residence in, the United States;

(B) does not provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen of, or lawfully admitted for permanent residence in, the United States; or

(C) is not lawfully admitted for permanent residence in American Samoa, Guam, Palau (but only until the Compact of Free Association with Palau takes effect), the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, or the Virgin Islands.

(2) The term "construction" includes construction and initial equipment of new buildings, and expansion, remodeling, and alteration of existing buildings and equipment therein, including architect's services, but excluding off-site improvements.

(3) The term "elementary school" means a school which provides education for children who are deaf or hard-of-hearing from the age of onset of deafness to age fifteen, inclusive, but not beyond the eighth grade or its equivalent.

(4) The term "institution of higher education" means an educational institution in any State which (A) admits as regular students only individuals having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (B) is legally authorized within such State to provide a program of education beyond secondary education; (C) provides an educational program for which it awards a bachelor's degree; (D) includes one or more professional or graduate schools; (E) is a public or nonprofit private institution; and (F) is accredited by a nationally recognized accrediting agency or association. For the purpose of subparagraph (F), the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of training offered.

(5) The term "secondary school" means a school which provides education in grades nine through twelve, inclusive.

(6) The term "Secretary" means the Secretary of Education.

(7) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (but only until the Compact of Free Association with Palau takes effect).

(8) The term "NTID" means the National Technical Institute for the Deaf.

(9) The term "University" means Gallaudet University.

(20 U.S.C. 4351) Enacted August 4, 1986, P.L. 99–371, sec. 401, 100 Stat. 789; amended October 16, 1992, P.L. 102–421, secs. 101(b)(6), 131, 151(b), 106 Stat. 2156, 2164.

SEC. 202. GIFTS.

The University and NTID are authorized to receive by gift, devise, bequest, purchase, or otherwise, property, both real and personal, for the use of the University or NTID, or for the use, as appropriate, for any programs, departments, or other units as may be designated in the conveyance or will, and to hold, invest, use, or dispose of such property for the purpose stated in the conveyance or will.

(20 U.S.C. 4352) Enacted August 4, 1986, P.L. 99–371, sec. 402, 100 Stat. 789; amended October 16, 1992, P.L. 102–421, secs. 101(b)(6), 132, 106 Stat. 2151, 2156.

SEC. 203. AUDIT.

(a) GENERAL ACCOUNTING OFFICE AUTHORITY.—All financial transactions and accounts of the corporation or institution of higher education, as the case may be, in connection with the expenditure of any moneys appropriated by any law of the United States—

(1) for the benefit of Gallaudet University or for the construction of facilities for its use; or

(2) for the benefit of the National Technical Institute for the Deaf or for the construction of facilities for its use,

shall be settled and adjusted in the General Accounting Office.

(b) INDEPENDENT AUDIT.—Gallaudet University and the institution of higher education operating the National Technical Institute for the Deaf shall have an annual independent audit made of the programs and activities of the University and of the Institute, respectively.

(c) LIMITATIONS REGARDING EXPENDITURE OF FUNDS.—

(1) IN GENERAL.—No funds appropriated under this Act for Gallaudet University, including the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf, or for the National Technical Institute for the Deaf may be expended on the following:

(A) Alcoholic beverages.

(B) Goods or services for personal use.

(C) Housing and personal living expenses (but only to the extent such expenses are not required by written employment agreement).

(D) Lobbying, except that nothing in this subparagraph shall be construed to prohibit the University and NTID from educating the Congress, the Secretary, and others regarding programs, projects, and activities conducted at those institutions.

(E) Membership in country clubs and social or dining clubs and organizations.

(2) POLICIES.—

(A) Not later than 180 days after the date of the enactment of the Education of the Deaf Act Amendments of 1992, the University and NTID shall develop policies, to be applied uniformly, for the allowability of expenditures for each institution. These policies should reflect the unique nature of these institutions. The principles established by the Office of Management and Budget for costs of educational institutions may be used as guidance in developing these policies. General principles relating to allowability and reasonableness of all costs associated with the operations of the institutions shall be addressed. These policies shall be submitted to the Secretary for review and comments, and to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(B) Policies under subparagraph (A) shall include the following:

(i) Noninstitutional professional activities.
(ii) Fringe benefits.
(iii) Interest on loans.
(iv) Rental cost of buildings and equipment.
(v) Sabbatical leave.
(vi) Severance pay.
(vii) Travel.
(viii) Royalties and other costs for uses of patents.

(C) The Secretary is not authorized to add items to those specified in subparagraph (B).

(20 U.S.C. 4353) Enacted August 4, 1986, P.L. 99–371, sec. 403, 100 Stat. 790; amended October 16, 1992, P.L. 102–421, secs. 101(b)(6), 133, 106 Stat. 2151, 2156.

NOTE: Public Law 100–202 (101 Stat. 1329–282) and Public Law 100–436 (102 Stat. 1707) each provide in part that funds appropriated in such Acts to Gallaudet University and the National Technical Institute for the Deaf shall be subject to audit by the Secretary of Education.

SEC. 204. REPORTS.

The Board of Trustees of Gallaudet University and the Board of Trustees or other governing body of the institution of higher education with which the Secretary has an agreement under section 112 shall prepare and submit an annual report to the Secretary, and to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate, not later than 100 days after the end of each fiscal year, which shall include the following:

(1) The number of students during the preceding academic year who enrolled and whether these were first time enrollments, who graduated, who found employment, or who left without completing a program of study, reported under each of the programs of the University (elementary, secondary, preparatory, undergraduate, and graduate) and of NTID.

(2) For the preceding academic year, and to the extent possible, the following data on individuals who are deaf and from minority backgrounds and who are students (at all educational levels) or employees:

(A) The number of students enrolled full- and part-time.

(B) The number of these students who completed or graduated from each of the educational programs.

(C) The disposition of these students upon graduation/completion of programs at NTID and at the University and its elementary and secondary schools in comparison to students from non-minority backgrounds.

(D) The number of students needing and receiving support services (such as tutoring and counseling) at all educational levels.

(E) The number of recruitment activities by type and location for all educational levels.

(F) Employment openings/vacancies and grade level/type of job and number of these individuals that applied and that were hired.

(G) Strategies (such as parent groups and training classes in the development of Individualized Education Programs) used by the elementary and secondary programs and the extension centers to reach and actively involve minority parents in the educational programs of their children who are deaf and the number of parents who have been served as a result of these activities.

(3) The annual audited financial statements of the University and NTID, respectively, together with the auditor's report.

(4) For the preceding fiscal year, a statement showing the receipts of the University and NTID and from what Federal sources, and a statement showing the expenditures of each institution by function, activity, and administrative and academic unit.

(5) A statement showing the use of funds (both corpus and income) provided by the Federal Endowment Program under section 207.

(6) A statement showing how such Endowment Program is invested, what the gains or losses (both realized and unrealized) on such investments were for the most recent fiscal year, and what changes were made in investments during that year.

(7) Such additional information as the Secretary may consider necessary.

(20 U.S.C. 4354) Enacted October 16, 1992, P.L. 102-421, secs. 101(b)(6), 134, 106 Stat. 2151, 2157.

SEC. 205. MONITORING, EVALUATION, AND REPORTING.

(a) ACTIVITIES.—The Secretary shall conduct monitoring and evaluation activities of the education programs and activities and the administrative operations of the University (including the elementary, secondary, preparatory, undergraduate, and graduate programs) and of NTID. The Secretary may also conduct studies related to the provision of preschool, elementary, secondary, and postsecondary education and other related services to individuals who are deaf. In carrying out the responsibilities described in this section, the Secretary is authorized to employ such consultants as may be necessary pursuant to the provisions of section 3109 of title 5, United States Code.

(b) REPORT.—The Secretary, as part of the annual report required under section 426 of the Department of Education Organization Act, shall include a description of the monitoring and evaluation activities pursuant to subsection (a), together with such recommendations, including recommendations for legislation, as the Secretary may consider necessary.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993, 1994, 1995, 1996, and 1997 to carry out the monitoring and evaluation activities authorized under this section.

(20 U.S.C. 4355) Enacted October 16, 1992, P.L. 102–421, secs. 101(b)(6), 135(a), 106 Stat. 2151, 2158.

SEC. 206. LIAISON FOR EDUCATIONAL PROGRAMS.

(a) DESIGNATION OF LIAISON.—Not later than 30 days after the date of enactment of this Act, the Secretary shall designate an individual in the Office of Special Education and Rehabilitative Services of the Department of Education from among individuals who have experience in the education of individuals who are deaf to serve as liaison between the Department and Gallaudet University, the National Technical Institute for the Deaf, and other postsecondary educational programs for individuals who are deaf under the Individuals with Disabilities Education Act, the Rehabilitation Act of 1973, and other Federal or non-Federal agencies, institutions, or organizations involved with the education or rehabilitation of individuals who are deaf or hard of hearing.

(b) DUTIES OF LIAISON.—The individual serving as liaison for educational programs for individuals who are deaf shall:

(1) provide information to institutions regarding the Department's efforts directly affecting the operation of such programs by such institutions;

(2) review research and other activities carried out by the University, NTID, and other Federal or non-Federal agencies, institutions, or organizations involved with the education or rehabilitation of individuals who are deaf or hard of hearing for the purpose of determining overlap and opportunities for coordination among such entities; and

(3) provide such support and assistance as such institutions may request and the Secretary considers appropriate.

(c) AUTHORITY OF SECRETARY.—Nothing in this section may be construed to affect the authority of the Secretary under this Act or any other Act with respect to Gallaudet University or the National Technical Institute for the Deaf.

(20 U.S.C. 4356) Enacted August 4, 1986, P.L. 99–371, sec. 406, 100 Stat. 790–791; amended October 30, 1990, P.L. 101–476, sec. 901(a)(2), 104 Stat. 1142; amended October 16, 1992, P.L. 102–421, secs. 101(b)(6), 136, 151(a)(5), (6), 106 Stat. 2159, 2164.

SEC. 207. FEDERAL ENDOWMENT PROGRAMS FOR GALLAUDET UNIVERSITY AND THE NATIONAL TECHNICAL INSTITUTE FOR THE DEAF.

(a) ESTABLISHMENT OF PROGRAMS.—

(1) The Secretary and the Board of Trustees of Gallaudet University are authorized to establish the Gallaudet University Federal Endowment Fund as a permanent endowment fund, in accordance with this section, for the purpose of promoting the financial independence of the University. The Secretary and the Board of Trustees may enter into such agreements as may be necessary to carry out the purposes of this section with respect to the University.

(2) The Secretary and the Board of Trustees or other governing body of the institution of higher education with which the Secretary has an agreement under section 112 are author-

ized to establish the National Technical Institute for the Deaf Federal Endowment Fund as a permanent endowment fund, in accordance with this section, for the purpose of promoting the financial independence of NTID. The Secretary and the Board or other governing body may enter into such agreements as may be necessary to carry out the purposes of this section with respect to NTID.

(b) FEDERAL PAYMENTS.—

(1) The Secretary shall, consistent with this section, make payments to the Federal endowment funds established under subsection (a) from amounts appropriated under subsection (h) for the fund involved.

(2) Subject to the availability of appropriations and the non-Federal matching requirements of paragraph (3), the Secretary shall make payments to each Federal endowment fund in amounts equal to sums contributed to the fund from non-Federal sources (excluding transfers from other endowment funds of the institution involved).

(3) Effective for fiscal year 1993 and each succeeding fiscal year, for any fiscal year in which the sums contributed to the Federal endowment fund of the institution involved from non-Federal sources exceed $1,000,000, the non-Federal contribution to the Federal endowment fund shall be $2 for each Federal dollar provided in excess of $1,000,000 (excluding transfers from other endowment funds of the institution involved).

(c) INVESTMENTS.—

(1) Except as provided in subsection (e), the University and NTID, respectively, shall invest its Federal endowment fund corpus and income in instruments and securities offered through one or more cooperative service organizations of operating educational organizations under section 501(f) of the Internal Revenue Code of 1986, or in low-risk instruments and securities in which a regulated insurance company may invest under the laws of the State in which the institution involved is located.

(2) In managing the investment of its Federal endowment fund, the University or NTID shall exercise the judgment and care, under the prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of that person's own business affairs.

(3) Neither the University nor NTID may invest its Federal endowment fund corpus or income in real estate, or in instruments or securities issued by an organization in which an executive officer, a member of the Board of Trustees of the University or of the host institution, or a member of the Advisory Board of NTID is a controlling shareholder, director, or owner within the meaning of Federal securities laws and other applicable laws. Neither the University nor NTID may assign, hypothocate, encumber, or create a lien on the Federal endowment fund corpus without specific written authorization of the Secretary.

(d) WITHDRAWALS AND EXPENDITURES.—

(1) Except as provided in paragraph (3)(B), neither the University nor NTID may withdraw or expend any of the corpus of its Federal endowment fund.

(2)(A) The University and NTID, respectively, may withdraw or expend the income of its Federal endowment fund only for expenses necessary to the operation of that institution, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research.

(B) Neither the University nor NTID may withdraw or expend the income of its Federal endowment fund for any commercial purpose.

(C) Beginning on October 1, 1992, the University and NTID shall maintain records of the income generated from its respective Federal endowment fund for the prior fiscal year.

(3)(A) Except as provided in subparagraph (B), the University and NTID, respectively, may, on an annual basis, withdraw or expend not more than 50 percent of the income generated from its Federal endowment fund from the prior fiscal year.

(B) The Secretary may permit the University or NTID to withdraw or expend a portion of its Federal endowment fund corpus or more than 50 percent of the income generated from its Federal endowment fund from the prior fiscal year if the institution involved demonstrates, to the Secretary's satisfaction, that such withdrawal or expenditure is necessary because of—

(i) a financial emergency, such as a pending insolvency or temporary liquidity problem;

(ii) a life-threatening situation occasioned by natural disaster or arson; or

(iii) another unusual occurrence or exigent circumstance.

(e) INVESTMENT AND EXPENDITURE FLEXIBILITY.—The corpus associated with a Federal payment (and its non-Federal match) made to the Federal endowment fund of the University or NTID shall not be subject to the investment limitations of subsection (c)(1) after 10 fiscal years following the fiscal year in which the funds are matched, and the income generated from such corpus after the tenth fiscal year described in this subsection shall not be subject to such investment limitations and to the withdrawal and expenditure limitations of subsection (d)(3).

(f) RECOVERY OF PAYMENTS.—After notice and an opportunity for a hearing, the Secretary is authorized to recover any Federal payments under this section if the University or NTID—

(1) makes a withdrawal or expenditure of the corpus or income of its Federal endowment fund that is not consistent with this section;

(2) fails to comply with the investment standards and limitations under this section; or

(3) fails to account properly to the Secretary concerning the investment of or expenditures from the Federal endowment fund corpus or income.

(g) DEFINITIONS.—As used in this section:

(1) The term "corpus", with respect to a Federal endowment fund under this section, means an amount equal to the Federal payments to such fund, amounts contributed to the fund from non-Federal sources, and appreciation from capital gains and reinvestment of income.

(2) The term "Federal endowment fund" means a fund, or a tax-exempt foundation, established and maintained pursuant to this section by the University or NTID, as the case may be, for the purpose of generating income for the support of the institution involved.

(3) The term "income", with respect to a Federal endowment fund under this section, means an amount equal to the dividends and interest accruing from investments of the corpus of such fund.

(4) The term "institution involved" means the University or NTID, as the case may be.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) In the case of the University, there are authorized to be appropriated for the purposes of this section such sums as may be necessary for each of the fiscal years 1993 through 1997.

(2) In the case of NTID, there are authorized to be appropriated for the purposes of this section such sums as may be necessary for each of the fiscal years 1993 through 1997.

(3) Amounts appropriated under paragraph (1) or (2) shall remain available until expended.

(i) EFFECTIVE DATE.—The provisions of this section shall take effect as if included in the provisions of the Education of the Deaf Act of 1986.

(20 U.S.C. 4357) Enacted October 16, 1992, P.L. 102–421, secs. 101(b)(6), 137, 106 Stat. 2159.

SEC. 208. SCHOLARSHIP PROGRAM.

(a) IN GENERAL.—The Secretary may make grants to institutions of higher education that have teacher training programs in deaf education or special education for the purpose of providing scholarships to individuals who are deaf for careers in deaf education or special education. Such institutions shall give priority consideration in the selection of qualified recipients of the scholarships to individuals from underrepresented backgrounds, particularly minority individuals who are deaf and who are underrepresented in the teaching profession. Grants may be used by institutions to assist in covering the cost of courses of training or study for such individuals and for establishing and maintaining fellowships or traineeships with stipends and allowances as may be determined by the Secretary.

(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants under subsection (a), there are authorized to be appropriated $2,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1997.

(20 U.S.C. 4358) Enacted October 16, 1992, P.L. 102–421, sec. 138, 106 Stat. 2162

SEC. 209. OVERSIGHT AND EFFECT OF AGREEMENTS.

(a) OVERSIGHT ACTIVITIES.—Nothing in this Act shall be construed to diminish the oversight activities of the Committee on

Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives with respect to any agreement entered into between the Secretary of Education and Gallaudet University, and the institution of higher education with which the Secretary has an agreement under title II.

(b) CONSTRUCTION OF AGREEMENTS.—The agreements described in subsection (a) of this section shall continue in effect, to the extent that such agreements are not inconsistent with the provisions of this Act.

(20 U.S.C. 4359) Enacted August 4, 1986, P.L. 99–371, sec. 409, 100 Stat. 794; amended October 16, 1992, P.L.102–421, sec. 101(b)(6), 106 Stat. 2151.

SEC. 210. INTERNATIONAL STUDENTS.

(a) ENROLLMENT.—Effective with new admissions for academic year 1993–1994 and each succeeding academic year, the University (including preparatory, undergraduate, and graduate students) and NTID shall limit the enrollment of international students to approximately 10 percent of the total postsecondary student population enrolled respectively at the University or NTID.

(b) TUITION SURCHARGE.—Effective with new admissions, the tuition for postsecondary international students enrolled in the University (including preparatory, undergraduate, and graduate students) or NTID shall include a surcharge of 75 percent beginning the academic year 1993–1994, and 90 percent beginning the academic year 1994–1995.

(c) REDUCTION OF SURCHARGE.—Beginning the academic year 1993–1994 and thereafter, the University or NTID may reduce the surcharge under subsection (b) to 50 percent if—

(A)[1] a student described under subsection (b) is from a developing country;

(B)[1] such student is unable to pay the tuition surcharge under subsection (b); and

(C)[1] such student has made a good faith effort to secure aid through such student's government or other sources.

(d) DEFINITION.—For purposes of subsection (c), the term "developing country" means a country that has a 1990 per capita income not in excess of $4,000 in 1990 United States dollars.

(20 U.S.C. 4359a) Enacted October 16, 1992, P.L. 102–421, secs. 101(b)(6), 139, 106 Stat. 2163.

SEC. 211. AUTHORIZATION OF APPROPRIATIONS.

(a) GALLAUDET UNIVERSITY.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 through 1997 to carry out the provisions of this Act, relating to—

(A)[1] Gallaudet University,

(B)[1] Kendall Demonstration Elementary School, and

(C)[1] the model secondary school for individuals who are deaf.

(b) NATIONAL TECHNICAL INSTITUTE FOR THE DEAF.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 through 1997 to carry out the provisions of this Act relating to the National Technical Institute for the Deaf.

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[1] So in original. Subparagraphs (A) through (C) probably should be redesignated as paragraphs (1) through (3), respectively.

(20 U.S.C. 4360) Enacted Aug. 4, 1986, P.L. 99–371, sec. 411, 100 Stat. 794–795; amended October 16, 1992, P.L. 102–421, secs. 101(b)(6), 140, 151(a)(4), 106 Stat. 2151, 2163.

PART III—INDIAN EDUCATION

Indian Self-Determination and Education Assistance Act

(Public Law 93–638)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".

(25 U.S.C. 450, note) Enacted January 4, 1975, P.L. 93–638, sec. 1, 88 Stat. 2203.

CONGRESSIONAL FINDINGS

SEC. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

(25 U.S.C. 450) Enacted January 4, 1975, P.L. 93–638, sec. 2, 88 Stat. 2203.

DECLARATION OF POLICY

SEC. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

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(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(25 U.S.C. 450a) Enacted January 4, 1975, P.L. 93–638, sec. 3, 88 Stat. 2203; amended Oct. 5, 1988, P.L. 100–472, sec. 102, 102 Stat. 2285.

Sec. 4. For purposes of this Act, the term—

(a) "construction programs" means programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including, but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control, or port facilities;

(b) "contract funding base" means the base level from which contract funding needs are determined, including all contract costs;

(c) "direct program costs" means costs that can be identified specifically with a particular contract objective;

(d) "Indian" means a person who is a member of an Indian tribe;

(e) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(f) "indirect costs" means costs incurred for a common or joint purpose benefiting more than one contract objective, or which are not readily assignable to the contract objectives specifically benefited without effort disproportionate to the results achieved;

(g) "indirect costs rate" means the rate arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal agency;

(h) "mature contract" means a self-determination contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization: *Provided,* That upon the request of a tribal organization or the tribal organization's Indian tribe for purposes of section 102(a) of this Act, a contract of the tribal organization which meets this definition shall be considered to be a mature contract;

(i) "Secretary", unless otherwise designated, means either the Secretary of Health and Human Services or the Secretary of the Interior or both;

(j) "self-determination contract" means a contract (or grant or cooperative agreement utilized under section 9 of this Act) entered into under title I of this Act between a tribal organization and the appropriate Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: *Provided,* That except as provided,[1] the last proviso in section 105(a) of this Act, no contract (or grant or cooperative agreement utilized under section 9 of this Act) entered into under title I of this Act shall be construed to be a procurement contract;

(k) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law; and

(l) "tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided,* That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

(25 U.S.C. 450b) Enacted, January 4, 1975, P.L. 93–638, sec. 4, 88 Stat. 2204; amended Oct. 5,1988, P.L. 100–472, sec.103, 102 Stat. 2286; amended Nov. 1, 1988, P.L. 100–581, sec. 208, 102 Stat. 2940; amended May 24, 1990, P.L. 101–301, sec. 2 (a)(1) and (2), 104 Stat. 206; amended Nov. 29, 1990, P.L. 101–644, sec. 202(1) and (2), 104 Stat. 4665.

REPORTING AND AUDIT REQUIREMENTS

SEC. 5. (a)(1) Each recipient of Federal financial assistance under this Act shall keep such records as the appropriate Secretary shall prescribe by regulation promulgated under sections 552 and 553 of title 5, United States Code, including records which fully disclose—

(A) the amount and disposition by such recipient of the proceeds of such assistance,

(B) the cost of the project or undertaking in connection with which such assistance is given or used;

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[1] So in law. Probably should read "provided in".

(C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and

(D) such other information as will facilitate an effective audit.

(2) For the purposes of this subsection, such records for a mature contract shall consist of quarterly financial statements for the purpose of accounting for Federal funds, the annual single-agency audit required by chapter 75 of title 31, United States Code and a brief annual program report.

(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Except as provided in section 8 or 106(a)(3) of this Act, funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States through the respective Secretary.

(e) The Secretary shall report annually in writing to each tribe regarding projected and actual staffing levels, funding obligations, and expenditures for programs operated directly by the Secretary serving that tribe.

REPORTS[1]

(f) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request through regulations promulgated under sections 552 and 553 of title 5, United States Code.

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[1] So in law. Section 208 of P.L. 100–472, 102 Stat. 2296, transferred and redesignated section 108 of the Indian Self-Determination Act as subsection (f) of this section. The heading probably should have been deleted.

(25 U.S.C. 450c) Enacted January 4, 1975, P.L. 93–638, sec. 5, 88 Stat. 2204; amended Oct. 5, 1988, P.L. 100–472, sec. 104, 102 Stat. 2287 and sec. 208, 102 Stat. 2296; amended Nov. 1, 1988, P.L. 100–581, sec. 209, 102 Stat. 2940; amended May 24, 1990, P.L. 101–301, sec. 2 (a)(4), 104 Stat. 206; amended Nov. 29, 1990, P.L. 101–644, sec. 201(3), 104 Stat. 4665.

PENALTIES

SEC. 6. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such grant, subgrant, contract, or subcontract, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(25 U.S.C. 450d) Enacted January 4, 1975, P.L. 93–638, sec. 6, 88 Stat. 2205.

WAGE AND LABOR STANDARDS

SEC. 7. (a) All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c)

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77)

(25 U.S.C. 450e) Enacted January 4, 1975, P.L. 93–638, sec. 7, 88 Stat. 2205.

CARRYOVER FUNDING

SEC. 8. Notwithstanding any other provision of law, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), for any fiscal year which are not obligated or expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation or expenditures during such succeeding fiscal year. In the case of amounts made available to a tribal organization under a self-determination contract, if the funds are to be expended in the succeeding fiscal year for the purpose for which they were originally appropriated, contracted or granted, or for which they are authorized to be used pursuant to the provisions of section 106(a)(3), no additional justification or documentation of such purposes need be provided by the tribal organization to the Secretary as a condition of receiving or expending such funds.

(25 U.S.C. 13a) Enacted January 4, 1975, P.L. 93–638, sec. 7, 88 Stat. 2206; amended Oct. 5, 1988, P.L. 100–472, sec. 105, 102 Stat. 2287.

Sec. 9. The provisions of this Act shall not be subject to the requirements of chapter 63 of title 31, United States Code: *Provided,* That a grant agreement or a cooperative agreement may be utilized in lieu of a contract under sections 102 and 103[1] of this Act when mutually agreed to by the appropriate Secretary and the tribal organization involved.

(25 U.S.C. 450e–1) Enacted April 3, 1984, P.L. 98–250, sec. 1, 98 Stat. 118; amended May 24, 1990, P.L.101–301, sec.2 (a)(5), 104 Stat. 206.

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(Note.—Title I of P.L. 93–638, the Indian Self-Determination Act, is omitted from this compilation.)

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[1] This reference to 103 of this Act probably should reflect the amendments made by section 201(b) of P.L. 100–472 (102 Stat. 2289). This provision repealed subsections (a) and (b) and the first sentence of subsection (c) of section 103 of the "Indian Self-Determination Act". The remainder of subsection (c) was redesignated as subsection (d) of section 102 of that Act. Section 202(a) of P.L. 100–472 redesignated section 104 as 103 and proceeded to make amendments to section 103 as redesignated.

Indian Education Assistance Act

SHORT TITLE

SEC. 201. This title may be cited as the "Indian Education Assistance Act".

(25 U.S.C. 455, note) Enacted January 4, 1975, P.L. 93–638, sec. 201, 88 Stat. 2213.

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

SEC. 202. [Amendments to the Act of April 16, 1934].[1]

* * * * * * *

SEC. 203. After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall prepare and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1975, a report which shall include:

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended including—

 (A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

 (B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to—

  (i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and

  (ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and

  (iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and

  (iv) the Act of September 23, 1950 (72 Stat. 548), as amended.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

 (A) a plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

 (B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

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[1] The Act of April 16, 1934 is printed subsequently in this compilation.

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

(25 U.S.C. 457, note) Enacted January 4, 1975, P.L. 93–638, Title II, sec. 203, 88 Stat. 2214.

PART B—SCHOOL CONSTRUCTION

SEC. 204. (a) The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this part B on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended. Such funds shall be allocated on the basis of existing funding priorities, if any, established by The United States Commissioner of Education under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. The United States Commissioner of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after the date of enactment of this Act, a list of those projects eligible for funding under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended.

(c) The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this part B on any school eligible to receive funds under section 208 of this Act.

(d) Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) The Secretary shall consult with the entity designated pursuant to section 5 of the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

(f) Within ninety days following the expiration of the three year period following the date of the enactment of this Act, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include—

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;

(2) a description of the working relationship between the Department of the Interior and the Department of Health, Education, and Welfare including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended, from the Department of Health, Education, and Welfare to the Department of the Interior.

(g) For the purpose of carrying out the provisions of this section, there is authorized to be appropriated the sum of $35,000,000 for the fiscal year ending June 30, 1974; $35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

(25 U.S.C. 458). Enacted January 4, 1975, P.L. 93–638, Title II, sec. 204, 88 Stat. 2214, 2215, 2216.

PART C—GENERAL PROVISIONS

SEC. 205. No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this title, available to the local school district.

(25 U.S.C. 458a). Enacted January 4, 1975, P.L. 93–638, Title II, sec. 205, 88 Stat. 2216.

SEC. 206. No funds from any contract or grant pursuant to this title shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

(25 U.S.C. 458b). Enacted January 4, 1975, P.L. 93–638, Title II, sec. 206, 88 Stat. 2216.

Sec. 207. (a)(1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this title.

(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided,* That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

(25 U.S.C. 458c) Enacted January 4, 1975, P.L. 93–638, Title II, sec. 207, 88 Stat. 2216.

Sec. 208. The Secretary is authorized and directed to provide funds, pursuant to this Act; the the[1] Act of April 16, 1934 (48 Stat. 596), as amended; or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private school.

(25 U.S.C. 458d) Enacted January 4, 1975, P.L. 93–638, Title II, sec. 208, 88 Stat. 2216, 2217; amended Dec. 21, 1982, P.L. 97–375, sec. 108(d), 96 Stat. 1820.

Sec. 209. The assistance provided in this Act for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972 (86 Stat. 235).

(25 U.S.C. 458e) Enacted January 4, 1975, P.L. 93–638, Title II, sec. 209, 88 Stat. 2217.

TITLE III—TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT

Sec. 301. The Secretary of the Interior and the Secretary of Health and Human Services (hereafter in this title referred to as the "Secretaries") each shall, for a period not to exceed eight years following enactment of this title, conduct a research and demonstration project to be known as the Tribal Self-Governance Project according to the provisions of this title.

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[1] So in original.

SEC. 302. (a) The Secretaries shall select thirty tribes to participate in the demonstration project, as follows:

(1) a tribe that successfully completes a Self-Governance Planning Grant, authorized by Conference Report 100–498 to accompany H.J. Res. 395, One Hundredth Congress, first session shall be selected to participate in the demonstration project; and

(2) the Secretaries shall select, in such a manner as to achieve geographic representation, the remaining tribal participants from the pool of qualified applicants. In order to be in the pool of qualified applicants—

(A) the governing body of the tribe shall request participation in the demonstration project;

(B) such tribe shall have operated two or more mature contracts; and

(C) such tribe shall have demonstrated, for the previous three fiscal years, financial stability and financial management capability as evidenced by such tribe having no significant and material audit exceptions in the required annual audit of such tribe's self-determination contracts.

SEC. 303. (a) The Secretaries is directed to negotiate, and to enter into, an annual written funding agreement with the governing body of a participating tribal government that successfully completes its Self-Governance Planning Grant. Such annual written funding agreement—

(1) shall authorize the tribe to plan, conduct, consolidate, and administer programs, services and functions of the Department of the Interior and the Indian Health Service of the Department of Health and Human Services that are otherwise available to Indian tribes or Indians, including but not limited to, the Act of April 16, 1934 (48 Stat. 596), as amended, and the Act of November 2, 1921 (42 Stat. 208);

(2) subject to the terms of the written agreement authorized by this title, shall authorize the tribe to redesign programs, activities, functions or services and to reallocate funds for such programs, activities, functions or services;

(3) shall not include funds provided pursuant to the Tribally Controlled Community College Assistance Act (Public Law 95–471), for elementary and secondary schools under the Indian School Equalization Formula pursuant to title XI of the Education Amendments of 1978 (Public Law 95–561, as amended), or for either the Flathead Agency Irrigation Division or the Flathead Agency Power Division: *Provided*, That nothing in this section shall affect the contractability of such divisions under section 102 of this Act;

(4) shall specify the services to be provided, the functions to be performed, and the responsibilities of the tribe and the Secretaries pursuant to this agreement;

(5) shall specify the authority of the tribe and the Secretaries, and the procedures to be used, to reallocate funds or modify budget allocations within any project year;

(6) shall, except as provided in paragraphs (1) and (2), provide for payment by the Secretaries to the tribe of funds from one or more programs, services, functions, or activities in an amount equal to that which the tribe would have been eligible to receive under contracts and grants under this Act, including direct program costs and indirect costs, and for any funds which are specifically related to the provision by the Secretaries of services and benefits to the tribe and its members: *Provided, however,* That funds for trust services to individual Indians are available under this written agreement only to the extent that the same services which would have been provided by the Secretaries are provided to individual Indians by the tribe;

(7) shall not allow the Secretaries to waive, modify or diminish in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians which exists under treaties, Executive orders, and Acts of Congress;

(8) shall allow for retrocession of programs or portions thereof pursuant to section 105(e) of this Act; and

(9) shall be submitted by the Secretaries ninety days in advance of the proposed effective date of the agreement to each tribe which is served by the agency which is serving the tribe which is a party to the funding agreement and to the Congress for review by the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(b) For the year for which, and to the extent to which, funding is provided to a tribe pursuant to this title, such tribe—

(1) shall not be entitled to contract with the Secretaries for such funds under section 102, except that such tribe shall be eligible for new programs on the same basis as other tribes; and

(2) shall be responsible for the administration of programs, services and activities pursuant to agreements under this title.

(c) At the request of the governing body of the tribe and under the terms of an agreement pursuant to subsection (a), the Secretaries shall provide funding to such tribe to implement the agreement.

(d) For the purpose of section 110 of this Act the term "contract" shall also include agreements authorized by this title; except that for the term of the authorized agreements under this title, the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81), and section 16 of the Act of June 18, 1934 (25 U.S.C. 476), shall not apply to attorney and other professional contracts by participating Indian tribal governments operating under the provisions of this title.

(e) To the extent feasible, the Secretaries shall interpret Federal laws and regulations in a manner that will facilitate the agreements authorized by this title.

(f) To the extent feasible, the Secretaries shall interpret Federal laws and regulations in a manner that will facilitate the inclusion of activities, programs, services, and functions in the agreements authorized by this title.

SEC. 304. The Secretaries shall identify, in the President's annual budget request to the Congress, any funds proposed to be included in the Tribal Self-Governance Project. The use of funds pursuant to this title shall be subject to specific directives or limitations as may be included in applicable appropriations Acts.

SEC. 305. The Secretaries shall submit to the Congress a written report on July 1 and January 1 of each of the five years following the date of enactment of this title on the relative costs and benefits of the Tribal Self-Governance Project. Such report shall be based on mutually determined baseline measurements jointly developed by the Secretaries and participating tribes, and shall separately include the views of the tribes.

SEC. 306. Nothing in this title shall be construed to limit or reduce in any way the services, contracts or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable Federal law and the provisions of section 110 of this Act shall be available to any tribe or Indian organization which alleges that a funding agreement is in violation of this section.

SEC. 307. For the purpose of providing planning and negotiation grants to the ten tribes added by section 3 of the Tribal Self-Governance Demonstration Project Act to the number of tribes set forth by section 302 of this Act (as in effect before the date of enactment of this section), there is authorized to be appropriated $700,000.

SEC. 308. (a) The Secretary of Health and Human Services, in consultation with the Secretary of the Interior and Indian tribal governments participating in the demonstration project under this title, shall conduct a study for the purpose of determining the feasibility of extending the demonstration project under this title to the activities, programs, functions, and services of the Indian Health Service. The Secretary shall report the results of such study, together with his recommendations, to the Congress within the 12-month period following the date of the enactment of the Tribal Self-Governance Demonstration Project Act.

(b) The Secretary of Health and Human Services may establish within the Indian Health Service an office of self-governance to be responsible for coordinating the activities necessary to carry out the study required under subsection (a).

SEC. 309. The Secretary of the Interior shall conduct a study for the purpose of determining the feasibility of including in the demonstration project under this title those programs and activities excluded under section 303(a)(3). The Secretary of the Interior shall report the results of such study, together with his recommendations, to the Congress within the 12-month period following the date of the enactment of the Tribal Self-Governance Demonstration Project Act.

SEC. 310. For the purposes of providing one year planning and negotiations grants to the Indian tribes identified by section 302, with respect to the programs, activities, functions, or services of the Indian Health Service, there are authorized to be appropriated such sums as may be necessary to carry out such purposes. Upon completion of an authorized planning activity or a comparable planning activity by a tribe, the Secretary is authorized to negotiate and implement a Compact of Self-Governance and Annual Funding Agreement with such tribe.

(25 U.S.C. 450f note) Enacted October 5, 1988, P.L. 100–472, sec. 209, 102 Stat. 2296; amended December 4, 1991, P.L. 102–184, 105 Stat. 1278-1279; amended October 29, 1992, P.L. 102–573, sec. 814, 106 Stat. 4590.

Act of November 2, 1921 [1]

(P.L. 85, 67th Cong., popular name "Snyder Act")

AN ACT Authorizing appropriations and expenditures for the administration of Indian affairs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement, and general administration of Indian property.

For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purpose of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

Notwithstanding any other provision of this Act or any other law, postsecondary schools administered by the Secretary of the Interior for Indians, and which meet the definition of an "institution of higher education" under section 1201 of the Higher Education Act of 1965, shall be eligible to participate in and receive appropriated funds under any program authorized by the Higher Education Act of 1965 or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

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[1] Section 8 of Public Law 93–638 (Enacted January 4, 1975) 88 Stat., 2206, provides as follows:

"The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), for any fiscal year which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year."

(25 U.S.C. 13) Enacted November 2, 1921, Public No. 85, 67th Congress, 1st Session, ch. 115, 42 Stat. 208; amended October 12, 1976, P.L. 94–482, Title IV, sec. 410, 90 Stat. 2233, 2234.

Act of April 16, 1934

(P.L. 167, 73rd Cong., popular name "Johnson-O'Malley Act")

AN ACT Authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory.

(25 U.S.C. 452) Enacted April 16, 1934, ch. 147, sec. 1, 48 Stat. 596; amended June 4, 1936, ch. 490, 49 Stat. 1458, 1459.

SEC. 2. That the Secretary of the Interior, in making any contract herein authorized, may permit such contracting party to utilize, for the purposes of this Act, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance.

(25 U.S.C. 453) Enacted April 16, 1934, ch. 147, sec. 2, 48 Stat. 596; amended June 4, 1936, ch. 490, 49 Stat. 1459.

SEC. 3. That the Secretary of the Interior is hereby authorized to[1] perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for the purpose of carrying the provisions of this Act into effect: *Provided,* That such minimum standards of service are not less than the highest maintained by the States or Territories within which said contract or contracts, as herein provided, are to be effective.

(25 U.S.C. 454) Enacted April 16, 1934, ch. 147, sec. 3, 48 Stat. 596; amended June 4, 1936, ch. 490, 49 Stat. 1459.

SEC. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: *Provided,* That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students.

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[1] The formula for distribution of JOM Supplemental Assistance is to be set by vote of the Tribes—sec. 1102 of P.L. 95-561, see page 245, infra.

(25 U.S.C. 455) Enacted January 4, 1975, P.L. 93–638, sec. 202, 88 Stat. 2213.

Sec. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided, however,* That, whenever a local Indian committee or committees established pursuant to section 305(b)(2)(B)(ii) of the act of June 23, 1972 (86 Stat. 235)[1] or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district, such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

(25 U.S.C. 456) Enacted January 4, 1975, P.L. 93–638, sec. 202, 88 Stat. 2213, 2214.

Sec. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students.

(25 U.S.C. 457) Enacted January 4, 1975, P.L. 93–638, sec. 202, 88 Stat. 2214.

(25 U.S.C. 452–457) Enacted April 16, 1934, P.L. 167, 73rd Cong., 48 Stat. 596; amended June 4, 1936, P.L. 638, 74th Cong., 49 Stat. 1458; amended June 29, 1960, P.L. 86–533, 74 Stat. 248; amended Jan 4, 1975, P.L. 93–638, 88 Stat. 2213.

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[1] So in original. The reference to section 305(b)(2)(B)(ii) of the act of June 23, 1972 probably should be to 305(b)(2)(B)(ii) of the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241dd; September 30, 1950; P.L. 81–874). Section 411(a) of P.L. 92–318 (act of June 23, 1972; 86 Stat. 336) amended the Act of September 30, 1950 by redesignating title III as title IV and adding a new title III. Section 301 of the new title III states this title may be cited as the "Indian Elementary and Secondary School Assistance Act". Subsequently this act was repealed in its entirety by section 5352(1) of P.L. 100–297 (102 Stat. 414).

Education Amendments of 1978

TITLE XI—INDIAN EDUCATION

PART A—ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

AMENDMENT TO PUBLIC LAW 874

SEC. 1101. (a)[1] * * *

(b)[2] * * *

(c)[3] * * *

(d) Within one year of the date of enactment of this Act, the Secretary, in cooperation with the Commissioner, shall propose and promulgate special regulations which will provide that where a local educational agency does not undertake the remedial action required by the Commissioner under section 5(b)(3)(C)(vi) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) and the Commissioner determines that an extension of time will not effectively encourage the remedy, the affected tribes may elect to contract with the Bureau under title I of the Indian Self-Determination and Education Assistance Act to provide educational services provided by the local educational agency or elect to have such services provided by a Bureau of Indian Affairs school. Such regulations shall also establish procedures whereby the funding necessary to provide such educational services may be obtained, and establish such procedures as are necessary to insure orderly and expeditious transition in provision of educational services.

(e)[4] * * *

(20 U.S.C. 240, note) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1101, 92 Stat. 2315.

FUNDING PROVISION

SEC. 1102. (a) The Secretary of the Interior shall develop alternative methods for the equitable distribution of any supplement program funds provided, pursuant to an appropriation under the Act of November 2, 1921, commonly referred to as the Snyder Act, for contracting under the Act of April 16, 1934, commonly referred to as the Johnson-O'Malley Act, and shall publish in the Federal Register by March 1, 1979, such alternatives for the purpose of allowing eligible tribes to comment by May 1, 1979. At that time, the

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[1] Section 1101(a) of the Education Amendments of 1978 (P.L. 95–561) amended section 3(d)(2)(D) of Public Law 874. .

[2] Section 1101(b) of the Education Amendments of 1978 repealed section 5(a)(2) of Public Law 874.

[3] Section 1101(c) of the Education Amendments of 1978 amended section 5(b) of Public Law 874 to add a new paragraph (3).

[4] Section 1101(e) of the Education Amendments of 1978 amended section 5(c)(2)(A) of Public Law 874 by redesignating divisions (ii) through (vi) as (iii) through (viii) and by adding a new division (ii).

Secretary shall conduct a field survey listing all alternative formula.

(b) By July 1, 1979, the Secretary shall establish and publish the formula in the Federal Register which the majority of such tribes determine, but vote certified to the Secretary, to be most equitable and shall use such formula for purposes of distribution of the funds appropriated pursuant to such Act beginning on or after October 1, 1979. The Secretary shall, in accordance with procedures consistent with that prescribed herein, revise such formula periodically as necessary.

(25 U.S.C. 13 note) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1102, 92 Stat. 2316.

BASIC EDUCATIONAL SUPPORT

SEC. 1103. (a)(1) From sums already appropriated under the Act of November 2, 1921 (25 U.S.C. 13) and notwithstanding any other provision of law or any requirement of a grant or agreement relating to the timing of payments for basic support contracts or grants under the Act of April 16, 1934 (25 U.S.C. (452–457), the Secretary of the Interior shall make payments of all funds appropriated under the authority of the Act of November 2, 1921, for fiscal year 1978 (including any fiscal year 1978 funds subsequently obligated in fiscal year 1979 from such appropriation) for basic support contracts or grants to any school that had a deficit in its operating budget for fiscal year 1978 as a consequence of the lack of complete payment from the Department of the Interior for such contract or grant. Such payments shall be made in accordance with any applicable condition of such contracts or grants other than conditions relating to the timing of payments.

(2) The Secretary of the Interior shall make the payments referred to in paragraph (1) not later than thirty days after the date of the enactment of this Act, Saturdays, Sundays, and legal public holidays, as established by section 6103 of title 5, United States Code, shall not be considered as days for purposes of the preceding sentence.

(b) Such sums as are needed under such Act of November 2, 1921, are authorized to be appropriated to provide funds for basic educational support through parent committees under such Act of April 16, 1934, to those public schools educating Indian students and whose total sum of Federal, State, and local funds is insufficient to bring the education of the enrolled Indian students to a level equal to the level of education provided non-Indian students in the public schools in which they are enrolled where the absence of such support would result in the closing of schools or the reduction in quality of the education program afforded Indian students attending public schools.

(25 U.S.C. 13, note) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1103, 92 Stat. 2316; amended Aug. 6, 1979, P.L. 96-46, sec. 2(b)(1), 93 Stat. 341.

PART B—BUREAU OF INDIAN AFFAIRS PROGRAMS

STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN IN BUREAU OF INDIAN AFFAIRS SCHOOLS

SEC. 1121. (a) The Secretary, in consultation with the Assistant Secretary of Health, Education, and Welfare for Education, and in consultation with Indian organizations and tribes, shall carry out or cause to be carried out by contract with an Indian organization such studies and surveys, making the fullest use possible of other existing studies, surveys, and plans, as are necessary to establish and revise standards for the basic education of Indian children attending Bureau schools and contract schools. Such studies and surveys shall take into account factors such as academic needs, local cultural differences, type and level of language skills, geographical isolation and appropriate teacher-student ratios for such children, and shall be directed toward the attainment of equal educational opportunity for such children.

(b)(1) Within eighteen months of the date of enactment of this Act, the Secretary shall propose minimum academic standards for the basic education of Indian children, and shall distribute such proposed standards in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within twenty-one months of the date of enactment of this Act, the Secretary shall establish final standards, distribute such standards to all the tribes and publish such standards in the Federal Register. The Secretary shall revise such standards periodically as necessary. Prior to any revision of such standards, the Secretary shall distribute such proposed revision to all the tribes, and publish such proposed revision in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

(2) Such standards shall apply to Bureau schools, and subject to subsection (e), to contract schools, and may also serve as a model for educational programs for Indian children in public schools. In establishing and revising such standards, the Secretary shall take into account the special needs of Indian students and the support and reinforcement of the specific cultural heritage of each tribe. Such standards shall include a requirement, developed in coordination with Indian tribes, the affected local school boards, the Indian Health Service of the Department of Health and Human Services, the State health departments, and the Centers for Disease Control and Prevention, on immunization for childhood diseases, including provisions for in-school immunization, where necessary.

(c) The Secretary shall provide alternative or modified standards in lieu of the standards established under subsection (b), where necessary, so that the programs of each school shall be in compliance with the minimum standards required for accreditation of schools in the State where the school is located.

(d) A tribal governing body, or the local school board so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsections (b) and (c), where such standards are deemed by such body to be inappropriate or ill-conceived. The tribal governing body or designated school board shall, within 60 days thereafter, submit to the Secretary a proposal for alternative standards that takes into account the specific needs of the tribe's children. Such revised standards shall be established by the Secretary unless specifically rejected by the Secretary for good cause and in writing to the affected tribes or local school board, which rejection shall be final and unreviewable. Such revised standards shall be established by the Secretary unless such standards are specifically rejected by the Secretary for good cause and the Secretary notifies each affected tribe and local school board in writing of such rejection. Such rejection shall be final and not reviewable.[1]

(e)(1) The Secretary, through contracting procedures, shall assist school boards of contract schools in the implementation of the standards established under subsection (b) and (c), if the school boards request that such standards, in part or in whole, be implemented. At the request of a contract school board, the Secretary shall provide alternative or modified standards for the standards established under subsections (b) and (c) to take into account the needs of the Indian children and the contract school.

(2) Within two years after the date of enactment of the Indian Education Technical Amendments Act of 1985, or two years after the date of the initial contract for the provision of educational services under the Indian Self-Determination and Education Assistance Act, whichever is later, each such school shall (A) be in compliance with the standards prescribed under subsection (a), or (B) have obtained accreditation, or be a candidate for accreditation, with one of the accrediting agencies recognized by the Secretary of Education or the State in which it is found. The Secretary shall not rescind or fail to renew a contract because of this paragraph until at least one year after notifying the school of a failure to comply. During such one-year period, the Secretary shall render technical assistance to aid the school to comply.

(3) Within one year of the date of the enactment of the Indian Education Technical Amendments Act of 1985, the Bureau shall, either directly or through contract with an Indian organization, establish a consistent system of reporting standards for fiscal control and fund accounting for all contract schools. Such standards shall yield data results comparable to those used by Bureau schools.

(f) Subject to subsections (d) and (e), the Secretary shall begin to implement the standards established under this section immediately upon the date of their establishment. No later than January 1, 1981, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract schools up to the level required by the applicable standards established under this section. Such plan shall include, but not be limited to, detailed information on the status of each school's educational program in relation to the applicable standards established under this section, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school up to the level required by such standards.

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[1] P.L. 99–89, 99 Stat. 379, inadvertently added these sentences, thereby repeating the previous sentences.

(g)(1) Except as specifically required by statute, no school or peripheral dormitory operated by the Bureau of Indian Affairs on or after the date of enactment of the Indian Education Technical Amendments Act of 1985 may be closed or consolidated or have its program substantially curtailed unless done according to the requirements of this subsection, except that, in those cases where the tribal governing body, or the local school board concerned (if so designated by the tribal governing body), requests closure or consolidation, the requirements of this subsection shall not apply. The requirements of this subsection shall not apply when a temporary closure, consolidation, or substantial curtailment is required by plant conditions which constitute an immediate hazard to health and safety.

(2) The Secretary shall, by regulation, promulgate standards and procedures for the closing, consolidation, or substantial curtailment of Bureau schools in accordance with the requirements of this subsection.

(3)Whenever closure, transfer to any other authority, consolidation, or substantial curtailment of a school is under active consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, and designated local school board, will be notified as soon as such consideration or review begins, kept fully and currently informed, and afforded an opportunity to comment with respect to such consideration or review. When a formal decision is made to close, transfer to any other authority, consolidate, or substantially curtail a school, the affected tribe, tribal governing body, and designated local school board shall be notified at least 6 months prior to the end of the school year preceding the proposed effective date. Copies of any such notices and information shall be transmitted promptly to the Congress and published in the Federal Register.

(4) The Secretary shall make a report to Congress, the affected tribe, and the designated local school board describing the process of the active consideration or review referred to in paragraph (3). At a minimum, the report shall include a study of the impact of such action on the student population, with every effort to identify those students with particular educational and social needs, and to insure that alternative services are available to such students. Such report shall include the description of the consultation conducted between the potential service provider, current service provider, parents, tribal representative and the tribe or tribes involved, and the Director of the Office of Indian Education Programs within the Bureau regarding such students. No irreversible action may be taken in furtherance of any such proposed school closure, transfer to any other authority, consolidation, or substantial curtailment (including any action which would prejudice the personnel or programs of such school) until the end of the first full academic year after such report is made.[1]

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[1] In the Continuing Resolution for FY 1987, P.L. 99-591, the Bureau was instructed to prepare and submit such a report for Phoenix Indian School, Phoenix, Arizona, and further instructed to "take no action to close the school or dispose of the property" until Congress specifically instructed. The Appropriations Committee intended this to be permanent.

(5) The Secretary may terminate, contract, transfer to any other authority, or consolidate or substantially curtail the operation or facilities of—

(A) any Bureau funded school that is operated on or after April 1, 1987, or

(B) any program of such a school that is operated on or after April 1, 1987,

only if the tribal governing body approves such action.

(h) There are hereby authorized to be appropriated such sums as may be necessary, for academic program costs, in order to bring all Bureau and contract schools up to the level required by the applicable standards established under this section.

(i)(1) All schools funded by the Bureau of Indian Affairs shall include within their curriculum a program of instruction relating to alcohol and substance abuse prevention and treatment. The Assistant Secretary shall provide the technical assistance necessary to develop and implement such a program for students in kindergarten and grades 1 through 12, at the request of—

(A) any Bureau of Indian Affairs school (subject to the approval of the school board of such school); or

(B) any school board of a school operating under a contract entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(2) In schools operated directly by the Bureau of Indian Affairs, the Secretary shall, not later than 120 days after the date of the enactment of this subsection, provide for—

(A) accurate reporting of all incidents relating to alcohol and substance abuse; and

(B) individual student crisis intervention.

(3) The programs requested under paragraph (1) shall be developed in consultation with the Indian tribe that is to be served by such program and health personnel in the local community of such tribe.

(4) Schools requesting program assistance under this subsection are encouraged to involve family units and, where appropriate, tribal elders and Native healers in such instructions.

(j) For purposes of this section, the term "tribal governing body" means, with respect to any school, the tribal governing body, or tribal governing bodies, that represent at least 90 percent of the students served by such school.

(k)(1)(A) The Secretary shall only consider the factors described in subparagraphs (B) and (C) in reviewing—

(i) applications from any tribe for the awarding of a contract or grant for a school that is not a Bureau funded school,

(ii) applications from any tribe or school board of any Bureau funded school[1] for—

(I) a school which is not a Bureau funded school[1] or

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[1] Section 1(a)(1)(B)–(D) of P.L. 100–427, 102 Stat. 1603, amended section 1121(k)(1)(A)(i) incorrectly. The amendments were executed to clause (ii) to reflect the probable intent of Congress because the language to be amended appeared only in clause (ii).

(II) the expansion of a Bureau funded school[1] which would increase the amount of funds received by the Indian tribe or school board under section 1128.

The Secretary shall give consideration to all of such factors, but none of such applications may be denied based primarily upon the geographic proximity of public education.

(B) The Secretary shall consider the following factors relating to the program that is the subject of an application described in subparagraph (A):

(i) the adequacy of facilities or the potential to obtain or provide adequate facilities;

(ii) geographic and demographic factors in the affected areas;

(iii) adequacy of the applicant's program plans or, in the case of a Bureau funded school[1], of projected needs analysis done either by a tribe or by Bureau personnel;

(iv) geographic proximity of comparable public education; and

(v) the stated needs of all affected parties, including (but not limited to) students, families, tribal governments at both the central and local levels, and school organizations.

(C) The Secretary shall consider with respect to applications described in subparagraph (A) the following factors relating to all the educational services available at the time the application is considered:

(i) geographic and demographic factors in the affected areas;

(ii) adequacy and comparability of programs already available;

(iii) consistency of available programs with tribal educational codes or tribal legislation on education; and

(iv) the history and success of these services for the proposed population to be served, as determined from all factors and not just standardized examination performance.

(2)(A) The Secretary shall make a determination of whether to approve any application described in paragraph (1)(A) by no later than the date that is 180 days after the day on which such application is submitted to the Secretary.

(B) If the Secretary fails to make the determination described in subparagraph (A) with respect to an application by the date described in subparagraph (A), the application shall be treated as having been approved by the Secretary.

(3)(A) Any application described in paragraph (1)(A) may be submitted to the Secretary only if—

(i) the application has been approved by the tribal governing body of the students served by (or to be served by) the school or program that is the subject of the application, and

(ii) written evidence of such approval is submitted with the application.

(B) Each application described in paragraph (1)(A)—

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[1] Section 1(a)(1)(B)–(D) of P.L. 100–427, 102 Stat. 1603, amended section 1121(k)(1)(A)(i) incorrectly. The amendments were executed to clause (ii) to reflect the probable intent of Congress because the language to be amended appeared only in clause (ii).

(i) shall provide information concerning each of the factors described in paragraph (1)(B), and

(ii) may provide information concerning the factors described in paragraph (1)(C).

(4) Whenever the Secretary makes a determination to deny approval of any application described in paragraph (1)(A), the Secretary shall—

(A) state the objections in writing to the applicant by no later than the date that is 180 days after the day on which the application is submitted to the Secretary,

(B) provide assistance to the applicant to overcome stated objections, and

(C) provide the applicant a hearing, under the same rules and regulations pertaining to the Indian Self-Determination and Education Assistance Act, and an opportunity to appeal the objections raised by the Secretary.

(5)(A) Except as otherwise provided in this paragraph, the action which is the subject of any application described in paragraph (1)(A) that is approved by the Secretary shall become effective with the commencement of the academic year succeeding the fiscal year in which the application is approved, or at an earlier date determined by the Secretary.

(B) If an application is treated as having been approved by the Secretary by reason of paragraph (2)(B), the action that is the subject of the application shall become effective on the date that is 18 months after the date on which the application is submitted to the Secretary, or at an earlier date determined by the Secretary.

(6)(A) Any application for expansion of the grade levels offered by a contract school which has been submitted to the Secretary prior to April 28, 1988, shall be reviewed under the regulations and guidelines in effect on the date on which such application was submitted, unless the applicant elects to have the provisions of this subsection apply to the review of such application.

(B) Notwithstanding any other provision of law, if the school board of the Bureau funded schools at the Pueblo of Zia and the Tama Settlement vote within the 2-year period beginning on the date of enactment of the Indian Education Amendments of 1988 to expand each of the schools to include kindergarten through grade 8, the schools shall be so expanded at the beginning of the next school year occurring after the vote.

(25 U.S.C. 2001) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1121, 92 Stat. 2316; amended Aug. 6, 1979, P.L. 96–46, sec. 2(b)(2)–(4), 93 Stat. 341; amended Oct. 19, 1984, P.L. 98–511, sec. 502(a)–(e), 98 Stat. 2391; amended Aug. 15, 1985, P.L. 99–89, sec. 2(a)-(d), 98 Stat. 379; amended Oct. 27, 1986, P.L. 99–570, sec. 4133 (b)(3), 100 Stat 3207–134; amended April 28, 1988, P.L. 100–297, secs. 5102 and 5104, 102 Stat. 363–367; amended Sept. 9, 1988, P.L. 100–427, sec. 1, 102 Stat. 1603; amended October 27, 1992, P.L. 102–531, sec. 312(b), 106 Stat. 3504.

NATIONAL CRITERIA FOR DORMITORY SITUATIONS

SEC. 1122. (a) The Secretary, in consultation with the Assistant Secretary for Health, Education, and Welfare for Education, and in consultation with Indian organizations and tribes, shall conduct or cause to be conducted by contract with an Indian organization, a study of the costs applicable to boarding arrangements for Indian students provided in Bureau and contract schools, for the purpose of establishing national criterial[1] for such dormitory situations. Such criteria shall include adult-child ratios, needs for counselors (including special needs related to off-reservation boarding arrangements), space, and privacy.

(b) Within fifteen months of the date of enactment of this Act, the Secretary shall propose such criteria, and shall distribute such proposed criteria to the tribes and publish such proposed criteria in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within eighteen months of the date of the enactment of this Act, the Secretary shall establish final criteria, distribute such criteria to all the tribes, and publish such criteria in the Federal Register. The Secretary shall revise such criteria periodically as necessary. Prior to any revision of such criteria, the Secretary shall distribute such proposed revision to all the tribes, and publish such proposed revision in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

(c) The Secretary shall begin to implement the criteria established under this section immediately upon the date of their establishment. No later than January 1, 1981, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract boarding schools up to the criteria established under this section. Such plan shall include, but not be limited to, predictions for the relative need for each boarding school in the future, detailed information on the status of each school in relation to the criteria established under this section, specific cost estimates for meeting such criteria at each school, and specific time lines for bringing each school up to the level required by such criteria.

(d)(1) The criteria established under this section may be waived in the same manner as the standards provided under section 1121(b) may be waived under section 1121(d).

(2) No school in operation on or before January 1, 1987 (regardless of compliance or noncompliance with the criteria established under this section) may be closed, transferred to another authority, consolidated or have its program substantially curtailed for failure to meet the criteria.

(3) By no later than May 1, 1989, the Secretary shall submit to the Congress a report detailing the costs associated with, and the actions necessary for, complete compliance with the criteria established under this section.

(e) There are hereby authorized to be appropriated such sums as may be necessary in order to bring each school up to the level required by the criteria established under this section.

(25 U.S.C. 2002) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1122, 92 Stat. 2318; amended Aug. 6, 1979, P.L. 96-46, sec. 2(b)(5), 93 Stat. 341; amended April 28, 1988, P.L. 100-297, sec. 5105, 102 Stat. 367.

REGULATIONS

SEC. 1123. (a) The provisions of part 32 of title 25 of the Code of Federal Regulations, as in effect on January 1, 1987, are hereby incorporated into this Act and shall be treated as though such provisions are set forth in this subsection. Accordingly, such provisions may be altered only by means of an amendment to this subsection that is contained in an Act or joint resolution which is enacted into law. To the extent that such provisions of part 32 do not conform with this Act or any statutory provision of law enacted before the date of enactment of this Act, the provisions of this Act and the provisions of such other statutory law shall govern.

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[1] So in original. Probably should be "criteria".

(b) The provisions of parts 31, 33, 36, 39, 42, and 43 of title 25 of the Code of Federal Regulations, as in effect on January 1, 1987, shall be applied by the Federal Government and shall not, before July 1, 1989, be amended, revoked, or altered in any manner. No officer or employee of the Executive Branch shall have the authority to issue any other regulations, prior to July 1, 1989, that supersede, supplement, or otherwise affect the provisions of such parts. To the extent that the provisions of such parts do not conform with this Act or any statutory provision of law enacted before the date of enactment of this Act, the provisions of this Act and the provisions of such other statutory law shall govern.

(c) After June 30, 1989, no regulation prescribed for the application of any program provided under this title shall become effective unless—

(1) the regulation has been published as a proposed regulation in the Federal Register,

(2) an opportunity of no less than 90 days has been afforded the public to comment on the published proposed regulation, and

(3) the regulation has, after such period for public comment, been published in the Federal Register as a final regulation.

(d) For purposes of this section, the term "regulation" means any rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed by any officer or employee of the Executive Branch.

(25 U.S.C. 2003) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1123, 92 Stat. 2319; amended April 28, 1988, P.L. 100-297, sec. 5106, 102 Stat. 367.

SCHOOL BOUNDARIES

SEC. 1124. (a) The Secretary shall, in accordance with this section, establish separate geographical attendance areas for each Bureau school.

(b)(1) Except as provided in paragraph (2), on or after the date of enactment of the Indian Education Technical Amendments Act of 1985, no attendance area shall be changed or established with respect to any such school unless the tribal governing body or the local school board concerned (if so designated by the tribal governing body) has been (i) afforded at least six months notice of the intention of the Bureau to change or establish such attendance area, and (ii) given the opportunity to propose alternative boundaries. Any tribe may petition the Secretary for revision of existing attendance area boundaries. The Secretary shall accept such proposed alternative or revised boundaries unless the Secretary finds, after consultation with the affected tribe or tribes, that such revised boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs.

(2) In any case where there is more than one Bureau funded school located on an Indian reservation, at the direction of the tribal governing body, the relevant school boards of the Bureau funded schools on the reservation may, by mutual consent, establish the relevant attendance areas for such schools, subject to the approval of the tribal governing body. Any such boundaries so established shall be accepted by the Secretary.

(c) In any case where there is only one Bureau operated program located on an Indian reservation, the attendance area for the program shall be the boundaries of the reservation served, and those students residing near the reservation shall also receive services from such program.

(d) The Bureau of Indian Affairs shall include in the final rules the requirement that each superintendent for education coordinate and consult with the affected tribes and relevant school boards in the establishment of such geographic boundaries.

(25 U.S.C. 2004) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1124, 92 Stat. 2319; amended Oct. 19, 1984, P.L. 98–511, sec. 503, 98 Stat. 2393; amended Aug. 15, 1985, P.L. 99–89, sec. 3, 99 Stat. 380; amended April 28, 1988, P.L. 100–297, sec. 5120, 102 Stat. 384.

FACILITIES CONSTRUCTION

SEC. 1125. (a) The Secretary shall immediately begin to bring all schools, dormitories, and other facilities operated by the Bureau or under contract with the Bureau in connection with the education of Indian children into compliance with all applicable Federal, tribal, or State health and safety standards, whichever provide greater protection (except that the tribal standards to be applied shall be no greater than any otherwise applicable Federal or State standards), and with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), except that nothing in this section shall require termination of the operations of any facility which does not comply with such provisions and which is in use on the date of enactment of this Act.

(b) Within one year of the date of enactment of this Act, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring such facilities into compliance with such standards. Such plan shall include, but not be limited to, detailed information on the status of each facility's compliance with such standards, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school into compliance with such standards.

(c) Within six months of the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress, and publish in the Federal Register, the system used to establish priorities for school construction projects. At the time any budget request for school construction is presented, the Secretary shall publish in the Federal Register and submit with the budget request the current list of all school construction priorities.

(d)(1) A Bureau school may be closed or consolidated, and the programs of a Bureau school may be substantially curtailed, by reason of plant conditions that constitute an immediate hazard to health and safety only if a health and safety officer of the Bureau determines that such conditions exist at the Bureau school.

(2)(A) In making determinations described in paragraph (1) before July 1, 1989, health and safety officers of the Bureau shall use the health and safety guidelines of the Bureau that were in effect on January 1, 1988.

(B) Upon the enactment of the Indian Education Amendments of 1988, the Secretary shall conduct a review of the guidelines used by the Bureau in determining whether plant conditions at a Bureau school constitute an immediate hazard to health and safety. By no later than June 30, 1989, the Secretary shall publish in the Federal Register the final form of regulations which shall be used by health and safety officers of the Bureau in making such determinations.

(C)(i) If—

(I) the Secretary fails to publish in the Federal Register in final form the regulations required under subparagraph (B) before July 1, 1989, and

(II) action described in paragraph (1) is taken after June 30, 1989, and before the date on which such regulations are published in final form in the Federal Register by reason of the condition of any plant,

an inspection of the condition of such plant shall be conducted by an appropriate tribal, county, municipal, or State health and safety officer to determine whether conditions at such plant constitute an immediate hazard to health and safety. Such inspection shall be completed by no later than the date that is 30 days after the date on which the action described in paragraph (1) is taken.

(ii) The inspection required under clause (i) shall be conducted by a health and safety officer designated jointly by the Secretary and the tribes affected by the action described in paragraph (1). If the Secretary and such tribes are unable to agree on the designation of the health and safety officer, the Secretary shall designate the health and safety officer and shall provide notice of such designation to each of such tribes before the inspection is conducted by such officer.

(iii) If the health and safety officer conducting an inspection of a plant required under clause (i) determines that conditions at the plant do not constitute an immediate hazard to health and safety, any consolidation or curtailment that was made by reason of conditions at the plant shall immediately cease and any school closed by reason of conditions at the plant shall be reopened immediately.

(3) If—

(A) a Bureau school is temporarily closed or consolidated, or the programs of a Bureau school are substantially curtailed, by reason of plant conditions that constitute an immediate hazard to health and safety, and

(B) the Secretary estimates that the closure, consolidation, or curtailment will be more than 1 year in duration,

the Secretary shall submit to the Congress, by no later than the date that is 6 months after the date on which the closure, consolidation, or curtailment is initiated, a report which sets forth the reasons for such temporary actions and the actions the Secretary is taking to eliminate the conditions that constitute the hazard.

(e) There are hereby authorized to be appropriated such sums as may be necessary to carry out subsection (a).

(25 U.S.C. 2005) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1125, 92 Stat. 2319; amended April 28, 1988, P.L. 100-297, sec. 5103, 102 Stat. 364.

BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS

SEC. 1126. (a) The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure, and supervision of programs and expenditures of Federal funds for the purpose of Indian education administered by the Bureau. The Assistant Secretary shall carry out such functions through the Director of the Office of Indian Education Programs within the Bureau, which shall be governed by the provisions of this Act, any other provision of law to the contrary notwithstanding.

(b) The Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved with provision of education services by the Bureau, including (but not limited to) school or institution custodial or maintenance personnel. The Assistant Secretary for Indian Affairs shall provide for the adequate coordination between the affected Bureau Offices and the Office to facilitate the consideration of all contract functions relating to education, except that the Secretary shall review the applications for the new school starts which were filed with the Bureau before October 1, 1984, under the rules and guidelines in effect on the date the application was filed. Nothing in this Act shall be construed to require the provision of separate support services for Indian education.

(c) Education personnel located in Bureau agencies, who are under the direction and supervision of the Director of the Office in accordance with the first sentence of subsection (b), shall—

(1) monitor and evaluate Bureau education programs,

(2) provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions, and

(3) provide technical and coordinating assistance in areas such as procurement, contracting, budgeting, personnel, and curriculum.

However, in the case of boarding schools located off reservation operated by the Bureau, education personnel located in area offices of the Bureau shall provide such services, under the direction and supervision of the Director of the Office.

(d)(1) The Assistant Secretary shall submit in the annual Budget a plan—

(A) for school facilities to be constructed under the system required by section 1125(c);

(B) for establishing priorities among projects and for the improvement and repair of education facilities, which together shall form the basis for the distribution of appropriated funds; and

(C) including a 5-year plan for capital improvements.

(2) The Assistant Secretary shall establish a program, including the distribution of appropriated funds, for the operation and maintenance of education facilities. Such program shall include, but not be limited to—

(A) a method of computing the amount necessary for each education facility;

(B) similar treatment of all Bureau and contract schools;

(C) a notice of an allocation of appropriated funds from the Director of the Office directly to the agency superintendents for education, or to the area education program administrators in the case of multitribal boarding schools located off reservation; and

(D) a system for the conduct of routine preventive maintenance.

The agency superintendents for education, or the area education program administrator in the case of multitribal boarding schools located off reservation, shall make arrangements for the maintenance of education facilities with the local supervisors of the Bureau maintenance personnel who are under the authority of the agency superintendent or area directors, respectively. The local supervisors of Bureau maintenance personnel shall take appropriate action to implement the decisions made in this regard by the agency superintendents for education and by the area education program administrators, except that no funds from this program may be authorized for expenditure by an agency superintendent for education or by an area education program administrator unless such superintendent or administrator is assured that the necessary maintenance has been, or will be, provided in a reasonable manner. Subject to the requirements of subsection (b) of this section, nothing in this Act shall be construed to require the provision of separate operations and maintenance personnel for the Office.

(3) The requirements of this subsection shall be implemented within 270 days following the date of enactment of the Indian Education Technical Amendments Act of 1985.

(e) For the purpose of this section the term "functions" includes powers and duties.

(25 U.S.C. 2006) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1126, 92 Stat. 2319; amended Aug. 6, 1979, P.L. 96–46, sec. 2(b)(6), 93 Stat. 341; amended Oct. 19, 1984, P.L. 98–511, sec. 504(a)–(d), 98 Stat. 2393; amended Aug. 15, 1985, P.L. 99–89, sec. 4, 99 Stat. 301; amended Sept. 9, 1988, P.L. 100–427, sec. 1(c)(3), 102 Stat. 1603.

IMPLEMENTATION

SEC. 1127. Within six months after the date of enactment of this Act, the Secretary shall establish and publish in the Federal Register the policies and procedures which are necessary to implement the transfer of functions made under section 1126.

(25 U.S.C. 2007) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1127, 92 Stat. 2320.

ALLOTMENT FORMULA

SEC. 1128. (a) The Secretary shall establish, by regulation adopted in accordance with section 1138, a formula for determining the minimum annual amount of funds necessary to sustain each

Bureau or contract school. In establishing such formula, the Secretary shall consider—

(1) the number of eligible Indian students served and size of the school;

(2) special cost factors, such as—

(A) isolation of the school;

(B) need for special staffing, transportation, or educational programs;

(C) food and housing costs;

(D) maintenance and repair costs associated with the physical condition of the educational facilities;

(E) special transportation and other costs of isolated and small schools;

(F) the costs of boarding arrangements, where determined necessary by a tribal governing body or designated local school board;

(G) costs associated with greater lengths of service by educational personnel; and

(H) special programs for gifted and talented students;

(3) the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located;

(4) such other relevant factors as the Secretary determines are appropriate.

Upon the establishment of the standards required by sections 1121 and 1122 of this Act, the Secretary shall revise the formula established under this subsection to reflect the cost and funding standards so established.

(b) Notwithstanding any other provisions of law, Federal funds appropriated for the general local operation of Bureau and contract schools, shall be allotted pro rata in accordance with the formula established under subsection (a), except that, in the case of any such school which is located in a school district of a local educational agency which receives from Federal funds under other provisions of law an average payment per Indian child attending such school in that district which is higher than the amount which would be received by such Bureau or contract school under such formula for each eligible Indian student attending such school, the payment to be received by that school under this section for each such child shall be equal to such average payment for an eligible Indian student in public school in that district.

(c)(1) For fiscal year 1990, and for each subsequent fiscal year, the Secretary shall adjust the formula established under subsection (a) to—

(A) use a weighted unit of 1.2 for each eligible Indian student enrolled in the seventh and eighth grades of the school in considering the number of eligible Indian students served by the school;

(B) consider a school with an enrollment of less than 50 eligible Indian students as having an average daily attendance of 50 eligible Indian students for purposes of implementing the adjustment factor for small schools; and

(C) take into account the provision of residential services on a less than 9-month basis at a school when the school board and supervisor of the school determine that a less than 9-month basis will be implemented for the school year involved.

(2)(A) The Secretary shall reserve for national school board training 0.2 percent of the funds appropriated for each fiscal year for distribution under this section. Such training shall be conducted through the same organizations through which, and in the same manner in which, the training was conducted in fiscal year 1986. If the contract for such training is not awarded before May 1 of each fiscal year, the contract under which such training was provided for the fiscal year preceding such fiscal year shall be renewed by the Secretary for such fiscal year. The agenda for the training sessions shall be established by the school boards through their regional or national organizations.

(B) For each year in which the Secretary uses a weighted unit formula established under subsection (a) to fund Bureau schools, a Bureau school which generates less than 168 weighted units shall receive an additional 2 weighted units to defray school board activities.

(C) From the funds allotted in accordance with the formula established under subsection (a) for each Bureau school, the local school board of such school may reserve an amount which does not exceed the greater of—

(i) $5,000, or

(ii) the lesser of—

(I) $15,000, or

(II) 1 percent of such allotted funds,

for school board activities for such school, including but not limited to, and notwithstanding any other provision of law, meeting expenses and the cost of membership in, and support of, organizations engaged in activities on behalf of Indian education.

(D) This paragraph shall take effect on October 1, 1989.

(3)(A) The Secretary shall adjust the formula established under subsection (a) to use a weighted unit of 2.0 for each eligible Indian student that—

(i) is gifted and talented (as determined pursuant to section 5324 of the Indian Education Act of 1988), and

(ii) is enrolled in the school on a full-time basis,

in considering the number of eligible Indian students served by the school.

(B) The adjustment required under subparagraph (A) shall be used for the later of the following fiscal years and for each fiscal year succeeding such later fiscal year:

(i) the second fiscal year succeeding the fiscal year in which the Secretary of Education makes the report required under section 5324(c)(6)(B) of the Indian Education Act of 1988, or

(ii) the first fiscal year for which an increase in the amount of funds appropriated for allotment under this section is designated by the law that appropriates such funds as the amount necessary to implement such adjustment without reducing allotments made under this section to any school.

(4) For each of the fiscal years 1989 and 1990, the Secretary shall adjust the formula established under subsection (a) to provide funding to contract schools that are treated under State law as po-

litical subdivisions of the State in an amount sufficient to enable the schools to meet standards imposed by the State.

(d) The Secretary shall reserve from the funds available for distribution for each fiscal year under this section an amount which, in the aggregate, shall equal 1 percent of the funds available for such purpose for that fiscal year. Such funds shall be used, at the discretion of the Director of the Office, to meet emergencies and unforeseen contingencies affecting the education programs funded under this section. Funds reserved under this subsection may only be expended for education services or programs at a schoolsite (as defined in section 5204(c)(2) of the Tribally Controlled Schools Act of 1988). Funds reserved under this subsection shall remain available without fisal year limitation until expended. However, the aggregate amount available from all fiscal years may not exceed 1 percent of the current year funds. Whenever the Secretary makes funds available under this subsection, the Secretary shall report such action to the appropriate committees of Congress within the annual budget submission.

(e) Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section.

(f) In this section "eligible Indian student" means a student who—

(1) is a member of or is at least a one-fourth degree Indian blood descendant of a member of an Indian tribe which is eligible for the special programs and services provided by the United States through the Bureau of Indian Affairs to Indians because of their status as Indians, and

(2) resides on or near an Indian reservation or meets the criteria for attendance at a Bureau off-reservation boarding school.

(g)(1) An eligible Indian student may not be charged tuition for attendance at a Bureau or contract school. A student attending a Bureau school under clause (2)(C) of this subsection may not be charged tuition.

(2) The Secretary may permit the attendance at a Bureau school of a student who is not an eligible Indian student if—

(A) the Secretary determines that the student's attendance will not adversely affect the school's program for eligible Indian students because of cost, overcrowding, or violation of standards,

(B) the school board consents, and

(C) the student is a dependent of a Bureau, Indian Health Service, or tribal government employee who lives on or near the school site, or

(D) a tuition is paid for the student that is not more than that charged by the nearest public school district for out-of-district students. The tuition collected is in addition to the school's allocation under this section.

(3) The school board of a contract school may permit students who are not eligible Indian students under this subsection to attend its contract school and any tuition collected for those students is in addition to funding under this section.

(h) At the election of the local school board made at any time during the fiscal year, a portion equal to no more than 15 percent of the funds allocated with respect to a school under this section for any fiscal year shall remain available to the school for expenditure without fiscal year limitation.

(25 U.S.C. 2008) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1128, 92 Stat. 2320; amended Aug. 6, 1979, P.L. 96–46, sec. 2(b)(7), (8), 93 Stat. 341; amended Oct. 19, 1984, P.L. 98–511, sec. 505(a)–(c), 98 Stat. 2394; amended Aug. 15, 1985, P.L. 99–89, sec. 5, 99 Stat. 381; amended Dec. 28, 1985, P.L. 99–228, sec. 1, 99 Stat. 1747; amended April 28, 1988, P.L. 100–297, secs. 5107, 5108, 102 Stat. 368; amended Sept. 9, 1988, P.L. 100–427, secs. 2, 3, and 5, 102 Stat. 1604; amended May 24, 1990, P.L.101–301, sec. 5(d)(1), 104 Stat. 208.

ADMINISTRATIVE COST GRANTS

SEC. 1128A. (a)(1) The Secretary shall, subject to the availability of appropriated funds, provide grants to each tribe or tribal organization operating a contract school in the amount determined under this section with respect to the tribe or tribal organization for the purpose of paying the administrative and indirect costs incurred in operating contract schools in order to—

(A) enable tribes and tribal organizations operating such schools, without reducing direct program services to the beneficiaries of the program, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice, and

(B) carry out other necessary support functions which would otherwise be provided by the Secretary or other Federal officers or employees, from resources other than direct program funds, in support of comparable Bureau operated programs.

(2) Amounts appropriated to fund the grants provided under this section shall be in addition to, and shall not reduce, the amounts appropriated for the program being administered by the contract schools.

(b)(1) The amount of the grant provided to each tribe or tribal organization under this section for each fiscal year shall be determined by applying the administrative cost percentage rate of the tribe or tribal organization to the aggregate of the Bureau elementary and secondary functions operated by the tribe or tribal organization for which funds are received from or through the Bureau. The administrative cost percentage rate determined under subsection (c) does not apply to other programs operated by the tribe or tribal organization.

(2) The Secretary shall—

(A) reduce the amount of the grant determined under paragraph (1) to the extent that payments for administrative costs are actually received by an Indian tribe or tribal organization under any Federal education program included in the direct cost base of the tribe or tribal organization, and

(B) take such actions as may be necessary to be reimbursed by any other department or agency of the Federal Government for the portion of grants made under this section for the costs of administering any program for Indians that is funded by appropriations made to such other department or agency.

(c) For purposes of this section, the administrative cost percentage rate for a contract school for a fiscal year is equal to the percentage determined by dividing—

(1) the sum of—

(A) the amount equal to—

(i) the direct cost base of the tribe or tribal organization for the fiscal year, multiplied by

(ii) the minimum base rate, plus

(B) the amount equal to—

(i) the standard direct cost base, multiplied by

(ii) the maximum base rate, by

(2) the sum of—

(A) the direct cost base of the tribe or tribal organization for the fiscal year, plus

(B) the standard direct cost base.

The administrative cost percentage rate shall be determined to the one hundredth of a decimal point.

(d)(1)(A) Funds received by a tribe or contract school as grants under this section for tribal elementary or secondary educational programs may be combined by the tribe or contract school into a single administrative cost account without the necessity of maintaining separate funding source accounting.

(B) Indirect cost funds for programs at the school which share common administrative services with tribal elementary or secondary educational programs may be included in the administrative cost account described in subparagraph (A).

(2) Funds received as grants under this section with respect to tribal elementary or secondary education programs shall remain available to the contract school without fiscal year limitation and without diminishing the amount of any grants otherwise payable to the school under this section for any fiscal year beginning after the fiscal year for which the grant is provided.

(3) Funds received as grants under this section for Bureau funded programs operated by a tribe or tribal organization under a contract or agreement shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived.

(4) In applying this section and section 106 of the Indian Self-Determination and Education Assistance Act with respect to an Indian tribe or tribal organization that—

(A) receives funds under this section for administrative costs incurred in operating a contract school or a school operated under the Tribally Controlled Schools Act of 1988, and

(B) operates one or more other programs under a contract or grant provided under the Indian Self-Determination and Education Assistance Act,

the Secretary shall ensure that the Indian tribe or tribal organization is provided with the full amount of the administrative costs, and of the indirect costs, that are associated with operating the contract school, a school operated under the Tribally Controlled Schools Act of 1988, and all of such other programs, except that funds appropriated for implementation of this section shall be used only to supply the amount of the grant required to be provided by this section.

(e) For purposes of this section—

(1)(A) The term "administrative cost" means the costs of necessary administrative functions which—

(i) the tribe or tribal organization incurs as a result of operating a tribal elementary or secondary educational program,

(ii) are not customarily paid by comparable Bureau operated programs out of direct program funds, and

(iii) are either—

(I) normally provided for comparable Bureau programs by Federal officials using resources other than Bureau direct program funds, or

(II) are otherwise required of tribal self-determination program operators by law or prudent management practice.

(B) The term "administrative cost" may include, but is not necessarily limited to—

(i) contract (or other agreement) administration;

(ii) executive, policy, and corporate leadership and decisionmaking;

(iii) program planning, development, and management;

(iv) fiscal, personnel, property, and procurement management;

(v) related office services and record keeping; and

(vi) costs of necessary insurance, auditing, legal, safety and security services.

(2) The term "Bureau elementary and secondary functions" means—

(A) all functions funded at Bureau schools by the Office of Indian Education Programs of the Bureau;

(B) all programs—

(i) funds for which are appropriated to other agencies of the Federal Government, and

(ii) which are administered for the benefit of Indians through Bureau schools; and

(C) all operation, maintenance, and repair funds for facilities and government quarters used in the operation or support of elementary and secondary education functions for the benefit of Indians, from whatever source derived.

(3) The term "tribal elementary or secondary educational programs" means all Bureau elementary and secondary functions, together with any other Bureau programs or portions of programs (excluding funds for social services that are appropriated to agencies other than the Bureau and are expended through the Bureau, funds for major subcontracts, construction, and other major capital expenditures, and unexpended funds carried over from prior years) which share common administrative cost functions, that are operated directly by a tribe or tribal organization under a contract or agreement with the Bureau.

(4)(A) Except as otherwise provided in this paragraph, the direct cost base of a tribe or tribal organization for the fiscal year is the aggregate direct cost program funding for all tribal elementary or secondary educational programs operated by the tribe or tribal organization during—

(i) the second fiscal year preceding such fiscal year, or

(ii) if such programs have not been operated by the tribe or tribal organization during the 2 preceding fiscal years, the first fiscal year preceding such fiscal year.

(B) In the case of Bureau elementary or secondary education functions which have not previously been operated by a tribe or tribal organization under contract or agreement with the Bureau, the direct cost base for the initial year shall be the projected aggregate direct cost program funding for all Bureau elementary and secondary functions to be operated by the tribe or tribal organization during that fiscal year.

(5) The term "maximum base rate" means 50 percent.

(6) The term "minimum base rate" means 11 percent.

(7) The term "standard direct cost base" means $600,000.

(f)(1) Upon the enactment of the Indian Education Amendments of 1988, the Secretary shall—

(A) conduct such studies as may be needed to establish an empirical basis for determining relevant factors substantially affecting the required administrative costs of tribal elementary and secondary educational programs, using the formula set forth in subsection (c), and

(B) a study to determine—

(i) a maximum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the smallest tribal elementary or secondary educational programs,

(ii) a minimum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the largest tribal elementary or secondary educational programs, and

(iii) a standard direct cost base which is the aggregate direct cost funding level for which the percentage determined under subsection (c) will—

(I) be equal to the median between the maximum base rate and the minimum base rate, and

(II) ensure that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of tribal elementary or secondary educational programs closest to the size of the program.

(2) The studies required under paragraph (1) shall—

(A) be conducted in full consultation (in accordance with section 1130) with—

(i) the tribes and tribal organizations that are affected by the application of the formula set forth in subsection (c), and

(ii) all national and regional Indian organizations of which such tribes and tribal organizations are typically members;

(B) be conducted on-site at a representative statistical sample of the tribal elementary or secondary educational programs under a contract entered into with a nationally reputable public accounting and business consulting firm;

(C) take into account the availability of skilled labor, commodities, business and automatic data processing services, related Indian preference and Indian control of education requirements, and any other market factors found substantially to affect the administrative costs and efficiency of each such tribal elementary or secondary educational program studied in order to assure that all required administrative activities can reasonably be delivered in a cost effective manner for each such program, given an administrative cost allowance generated by the values, percentages, or other factors found in the studies to be relevant in such formula;

(D) identify, and quantify in terms of percentages of direct program costs, any general factors arising from geographic isolation, or numbers of programs administered, independent of program size factors used to compute a base administrative cost percentage in such formula; and

(E) identify any other incremental cost factors substantially affecting the costs of required administrative cost functions at any of the tribal elementary or secondary educational programs studied and determine whether the factors are of general applicability to other such programs, and (if so) how they may effectively be incorporated into such formula.

(3) In carrying out the studies required under this subsection, the Secretary shall obtain the input of, and afford an opportunity to participate to, the Inspector General of the Department of the Interior.

(4) Determinations described in paragraph (2)(C) shall be based on what is pragmatically possible to do at each location studied, given prudent management practice, irrespective of whether required administrative services were actually or fully delivered at these sites, or other services were delivered instead, during the period of the study.

(5) Upon completion of the studies conducted under paragraph (1), but in no case later than October 1, 1989, the Secretary shall submit to the Congress a report on the findings of the studies, together with determinations based upon such findings that would affect the definitions of terms used in the formula that is set forth in subsection (c).

(6) The Secretary shall include in the Bureau's justification for each appropriations request for each fiscal year beginning after fiscal year 1989, a projection of the overall costs associated with the formula set forth in subsection (c) for all tribal elementary or secondary educational programs which the Secretary expects to be funded in the fiscal year for which the appropriations are sought.

(7) For purposes of this subsection, the size of tribal elementary or secondary educational programs is determined by the ag-

gregate direct cost program funding level for all Bureau funded programs which share common administrative cost functions.

(g)(1) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

(2) If the total amount of funds necessary to provide grants to tribes and tribal organizations in the amounts determined under subsection (b) for a fiscal year exceeds the amount of funds appropriated to carry out this section for such fiscal year, the Secretary shall reduce the amount of each grant determined under subsection (b) for such fiscal year by an amount that bears the same relationship to such excess as the amount of such grant determined under subsection (b) bears to the total of all grants determined under subsection (b) for all tribes and tribal organizations for such fiscal year.

(h)(1) Notwithstanding any other provision of this section, the amount of the grants provided under this section for fiscal year 1989 shall—

(A) in lieu of being determined under subsection (b), be determined for each tribal elementary or secondary educational program on the same basis that indirect costs were determined for such programs for fiscal year 1988, and

(B) be subject to the provisions of subsection (d).

(2) Notwithstanding any other provision of this section, the amount of the grant provided under this section for fiscal year 1990 with respect to each tribal elementary and secondary educational program that was operated by a tribe or tribal organization in fiscal year 1989 shall be equal to—

(A) if the amount of the grant determined under subsection (b) for fiscal year 1990 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1988 (or fiscal year 1989 if such program was not operated by the tribe or tribal organization during fiscal year 1988), the sum of—

(i) such amount received, plus

(ii) one-third of the excess of—

(I) such amount determined under subsection (b), over

(II) such amount received, or

(B) if such amount received exceeds such amount determined under subsection (b), the excess of—

(i) such amount received, over

(ii) an amount equal to one-third of the excess of—

(I) such amount received, over

(II) such amount determined under subsection (b).

(3) Notwithstanding any other provision of this section, the amount of the grants provided under this section for fiscal year 1991 with respect to each tribal elementary and secondary educational program that was operated by a tribe or tribal organization in fiscal year 1989 shall be equal to—

(A) if the amount of the grant determined under subsection (b) for fiscal year 1991 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1990, the sum of—

(i) such amount received, plus

(ii) one-half of the excess of—

(I) such amount determined under subsection (b), over

(II) such amount received, or

(B) if such amount received exceeds such amount determined under subsection (b), the excess of—

(i) such amount received, over

(ii) an amount equal to one-half of the excess of—

(I) such amount received over,[1]

(II) such amount determined under subsection (b).

(i) The provisions of this section shall also apply to those schools operating under the Tribally Controlled Schools Act of 1988.

(25 U.S.C. 2008a) Enacted Apr. 28, 1988, P.L. 100–297, sec. 5108, 102 Stat. 369–375; amended Sept. 9, 1988, P.L. 100–427, sec. 4, 102 Stat. 1604; amended May 24, 1990, P.L. 101–301, sec. 5(f), May 24, 1990, 104 Stat. 208–209.

UNIFORM DIRECT FUNDING AND SUPPORT

SEC. 1129. (a)(1) Within six months after the date of enactment of this Act, the Secretary shall establish, by regulation adopted in accordance with section 1138, a system for the direct funding and support of all Bureau and contract schools. Such system shall allot funds, in accordance with section 1128. Amounts appropriated for distribution under this section may be made available under paragraph (2) or under paragraph (3), as provided in the appropriation Act.

(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by section 1128, amounts appropriated in the appropriations Act for any fiscal year shall become available for obligation by the affected schools on October 1 of the fiscal year for which they are appropriated without further action by the Secretary, and shall remain available through six months of the succeeding fiscal year. In order to effect the transition to the advance funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an appropriations Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under section 1182 of 75 per centum of such appropriations, based on the school's student count for the preceding academic year; and

(ii) publish, no later than November 1 of the fiscal year for which funds are appropriated the allotments to be made from the remaining 25 per centum, adjusted to reflect actual student count, such funds to be immediately available for obligation by the affected schools.

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[1] So in law. Probably should read ", over".

(3)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by section 1128, amounts appropriated in an appropriation Act for any fiscal year shall become available for obligation by the affected schools on July 1 of the fiscal year in which they are appropriated without further action by the Secretary, and shall remain available for obligation through the succeeding fiscal year. In order to effect a transition to the forward funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an appropriation Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under section 1128 of 85 percent of such appropriation; and

(ii) publish, no later than September 30 of such preceding fiscal year, the allotments to be made under section 1128 of the remaining 15 percent of such appropriation, adjusted to reflect actual student attendance.

(4) Notwithstanding any law or regulation, the supervisor of a Bureau school may expend an aggregate of no more than $25,000 of the amount allotted the school under section 1128 to acquire supplies and equipment for the school without competitive bidding if—

(A) the cost for any single item purchased does not exceed $10,000;

(B) the school board approves the procurement;

(C) the supervisor certifies that the cost is fair and reasonable;

(D) the documents relating to the procurement executed by the supervisor or other school staff cite this paragraph as authority for the procurement; and

(E) the transaction is documented in a journal maintained at the school clearly identifying when the transaction occurred, what was acquired and from whom, the prices paid, the quantities acquired, and any other information the supervisor or school board considers relevant.

(5) If a sequestration order issued under the Balanced Budget and Emergency Deficit Control Act of 1985 reduces the amount of funds available for allotment under section 1128 for any fiscal year by more than 7 percent of the amount of funds available for allotment under section 1128 during the preceding fiscal year—

(A) the Secretary may, notwithstanding any other provision of law, use—

(i) funds appropriated for the operation of any Bureau school that is closed or consolidated, and

(ii) funds appropriated for any program that has been curtailed at any Bureau school,

to fund allotments made under section 1128, and

(B) the Secretary may waive the application of the provisions of section 1121(g) with respect to the closure or consolidation of a school, or the curtailment of a program at a school, during such fiscal year if the funds described in clauses (i) and (ii) of subparagraph (A) with respect to such school are used to fund allotments made under section 1128 for such fiscal year.

(b) In the case of all Bureau schools, allotted funds shall be expended on the basis of local financial plans which shall be prepared by the local school supervisor in active consultation with the local school board for each school, and the local school board for each school shall have the authority to ratify, reject, or amend such financial plan, and expenditures thereunder, and, on its own determination or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan. The supervisor shall provide the appropriate union representative of the education employees with copies of proposed draft financial plans and all amendments or modifications thereto, at the same time they are submitted to the local school board. The supervisor of the school may appeal any such action of the local school board to the superintendent for education of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the superintendent may, for good cause, overturn the action of the local school board. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action.

(c) Funds for self-determination grants under section 104(a)(2)[1] of the Indian Self-Determination and Education Assistance Act shall not be used for providing technical assistance and training in the field of education by the Bureau unless such services are provided in accordance with a plan, agreed to by the tribe or tribes affected and the Bureau, under which control of education programs is intended to be transferred to such tribe or tribes within a specific period of time negotiated under such agreement. The Secretary may approve applications for funding tribal divisions of education and the development of tribal codes of education from funds appropriated pursuant to section 104(a) of such Act.

(d) In the exercise of its authority under this section, a local school board may request technical assistance and training from the Secretary, and he shall, to the greatest extent possible, provide such services, and make appropriate provisions in the budget of the Office for such services.

(e)(1) A financial plan under subsection (b) for a school may include, at the discretion of the local administrator and the school board of such school, a provision for a summer program of academic and support services for students of the school. Any such program may include activities related to the prevention of alcohol and substance abuse. The Assistant Secretary of Indian Affairs shall provide for the utilization of any such school facility during any summer in which such utilization is requested.

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[1] So in law. Probably should be "103(a)(2)" since section 104 was redesignated as 103 by section 202(a) of P.L. 100–472, 102 Stat. 2289.

(2) Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 (25 U.S.C. 452 et seq.) and the Indian Education Act may be used to augment the services provided in each summer program at the option, and under the control, of the tribe or Indian controlled school receiving such funds.

(3) The Assistant Secretary of Indian Affairs, acting through the Director of the Office of Indian Education Programs, shall provide technical assistance and coordination for any program described in paragraph (1) and shall, to the extent possible, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of any such program.

(f)(1) From funds allotted to a Bureau school under section 1128, the Secretary shall, if specifically requested by the tribal governing body (within the meaning of section 1121(j)), implement any cooperative agreement entered into between the tribe, the Bureau school board, and the local public school district which meets the requirements of paragraph (2) and involves the school. The tribe, the Bureau school board, and the local public school district shall determine the terms of the agreement. Such agreement may encompass coordination of all or any part of the following:

(A) Academic program and curriculum, unless the Bureau school is currently accredited by a State or regional accrediting entity and would not continue to be so accredited.

(B) Support services, including procurement and facilities maintenance.

(C) Transportation.

(2) Each agreement entered into pursuant to the authority provided in paragraph (1) shall confer a benefit upon the Bureau school commensurate with the burden assumed, though this requirement shall not be construed so as to require equal expenditures or an exchange of similar services.

(25 U.S.C. 2009) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1129, 92 Stat. 2321; amended Oct. 19, 1984, P.L. 98–511, secs. 506(a) and (b), 507(a), 98 Stat. 2395, 2396; amended October 27, 1986, P.L. 99–570, sec. 4133(b)(4), 100 Stat. 3207–134; amended Apr. 28, 1988, P.L. 100–297, secs. 5109, 5110, 5118, 102 Stat. 375, 382; amended Sept. 9, 1988, P.L. 100–427, sec. 6 and 9(d), 102 Stat. 1605.

POLICY FOR INDIAN CONTROL OF INDIAN EDUCATION

SEC. 1130. (a) It shall be the policy of the[1] the Secretary and the Bureau, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

(b)(1) All actions under this Act shall be done with active consultation with tribes.

(2) The consultation required under paragraph (1) means a process involving the open discussion and joint deliberation of all options with respect to potential issues or changes between the Bu-

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[1] So in law, extra "the". See P.L. 100–297, sec. 5111, 102 Stat. 376.

reau and all interested parties. During such discussions and joint deliberations, interested parties (including, but not limited to, tribes and school officials) shall be given an opportunity to present issues including proposals regarding changes in current practices or programs which will be considered for future action by the Bureau. All interested parties shall be given an opportunity to participate and discuss the options presented or to present other alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information educed or presented by the interested parties during one or more of the discussions and deliberations.,[2] that there is a substantial reason for another course of action. The Secretary shall submit to any Member of Congress, within 18 days of the receipt of a written request by such Member, a written explanation of any decision made by the Secretary which is not consistent with the views of the interested parties.

(25 U.S.C. 2010) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1130, 92 Stat. 2321; amended Aug. 15, 1985, P.L. 99–89, sec. 6, 99 Stat. 382; amended Apr. 28, 1988, P.L. 100–297, sec. 5111, 102 Stat. 376; amended Sept. 9, 1988, P.L. 100–427, sec. 7, 102 Stat. 1605.

EDUCATION PERSONNEL

SEC. 1131. (a)(1) Chapter 51, subchapter III of chapter 53, and chapter 63 of title 5, United States Code, relating to leave, pay, and classification, and the sections relating to the appointment, promotion and removal of civil service employees, shall not apply to educators or to education positions (as defined in subsection (n)).

(2) Paragraph (1) shall take effect one year after the date of enactment of this Act.

(b) Not later than the effective date of subsection (a)(2), the Secretary shall prescribe regulations to carry out this section. Such regulations shall govern—

(1) the establishment of education positions,

(2) the establishment of qualifications for educators,

(3) the fixing of basic compensation for educators and education positions,

(4) the appointment of educators,

(5) the discharge of educators,

(6) the entitlement of educators to compensation,

(7) the payment of compensation to educators,

(8) the conditions of employment of educators,

(9) the length of the school year applicable to education positions described in subsection (n)(1)(A),

(10) the leave system for educators, and

(11) such other matters as may be appropriate.

(c)(1) In prescribing regulations to govern the qualifications of educators, the Secretary shall require—

(A)(i) that lists of qualified and interviewed applicants for education positions be maintained in each agency and area office of the Bureau from among individuals who have applied at the agency or area level for an education position or who have applied at the national level and have indicated in such application an interest in working in certain areas or agencies; and

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[2] So in law. Period probably should be deleted.

(ii) that a list of qualified and interviewed applicants for education positions be maintained in the Office from among individuals who have applied at the national level for an education position and who have expressed interest in working in an education position anywhere in the United States;

(B) that a local school board shall have the authority to waive on a case-by-case basis, any formal education or degree qualifications established by regulation pursuant to subsection (b)(2), in order for a tribal member to be hired in an education position to teach courses on tribal culture and language and that subject to subsection (d)(2)(A), a determination by a school board that such a person be hired shall be followed by the supervisor; and

(C) that it shall not be a prerequisite to the employment of an individual in an education position at the local level that such individual's name appear on the national list maintained pursuant to subsection (c)(1)(A)(ii) or that such individual has applied at the national level for an education position.

(2) The Secretary may authorize the temporary employment in an education position of an individual who has not met the certification standards established pursuant to regulations, if the Secretary determines that failure to do so would result in that position remaining vacant.

(d)(1) In prescribing regulations to govern the appointment of educators, the Secretary shall require—

(A)(i) that educators employed in a school (other than the supervisor of the school) shall be hired by the supervisor of the school unless there are no qualified applicants available, in which case the vacant position shall be filed[1] at the national level from the list maintained pursuant to subsection (c)(1)(A)(ii).[2]

(ii) each school supervisor shall be hired by the superintendent for education of the agency office of the Bureau in which the school is located, and

(iii) educators employed in an agency office of the Bureau shall be hired by the superintendent for education of the agency office;

(B) that before an individual is employed in an education position in a school by the supervisor of a school (or, with respect to the position of supervisor, by the appropriate agency superintendent for education), the local school board for the school shall be consulted, and that subject to subsection (d)(2), a determination by the school board that such individual should or should not be so employed shall be followed by the supervisor (or with respect to the position of supervisor, by the agency superintendent for education); and

(C) that before an individual may be employed in an education position at the agency level, the appropriate agency school board shall be consulted, and that, subject to subsection

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[1] So in original. Probably should be "filled".
[2] So in original. Period probably should be a comma.

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(d)(3), a determination by such school board that such individual should or should not be employed shall be followed by the agency superintendent for education.

(2)(A) The supervisor of a school may appeal to the appropriate agency superintendent for education any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the superintendent may, for good cause, overturn the determination of the local school board. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination.

(B) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for the school that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the local school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such superintendent identifying the reasons for overturning such determination.

(3) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the agency school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such superintendent identifying the reasons for overturning such determination.

(4) Any individual who applies at the local level for an education position shall state on such individual's application whether or not such individual has applied at the national level for an education position in the Bureau. If such individual is employed at the local level, such individual's name shall immediately be forwarded to the Secretary, who shall, as soon as possible but in no event in more than thirty days, ascertain the accuracy of the statement made by such individual pursuant to the first sentence of this sub-

paragraph. If the individual's statement is found to have been false, such individual, at the Secretary's discretion, may be disciplined or discharged. If the individual had applied at the national level for an education position in the Bureau, if[1] the appointment of such individual at the local level shall be conditional for a period of ninety days, during which period the Secretary may appoint a more qualified individual (as determined by the Secretary) from the list maintained at the national level pursuant to subsection (c)(1)(A)(ii) to the position to which such individual was appointed.

(5) Except as expressly provided, nothing in this section shall be construed as conferring upon local school boards, authority over, or control of, educators.

(e)(1) In prescribing regulations to govern the discharge and conditions of employment of educators, the Secretary shall require—

(A) that procedures be established for the rapid and equitable resolution of grievances of educators;

(B) that no educator may be discharged without notice of the reasons therefore and opportunity for a hearing under procedures that comport with the requirements of due process; and

(C) educators employed in Bureau schools shall be notified sixty days prior to the end of the school year whether their employment contract will be renewed for the coming year.

(2) The supervisor of a Bureau school may discharge (subject to procedures established under paragraph (1)(B) for cause (as determined under regulations prescribed by the Secretary) any educator employed in such school. Upon giving notice of proposed discharge to an educator, the supervisor involved shall immediately notify the local school board for the school of such action. A determination by the local school board that such educator shall not be discharged shall be followed by the supervisor. The supervisor shall have the right to appeal such action to the superintendent for education of the appropriate agency office of the Bureau. Upon such an appeal, the agency superintendent for education may, for good cause and in writing to the local school board, overturn the determination of the local school board with respect to the employment of such individual.

(3) Each local school board for a Bureau school shall have the right (A) to recommend to the supervisor of such school that an educator employed in the school be discharged, and (B) to recommend to the superintendent of education of the appropriate agency office of the Bureau and to the Director of the Office, that the supervisor of the school be discharged.

(f)(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section respecting an applicant or employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill a vacancy (no matter how such vacancy is created).

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[1] So in original. The word "if" probably should not appear.

(2) For purposes of this subsection, the term "tribal organization" means—

(A) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c); 85 Stat. 688)); or

(B) in connection with any personnel action referred to in this subsection, any local school board as defined in section 1139, and which has been delegated by such governing body the authority to grant a waiver under such subsection with respect to such personnel action.

(3) The term "Indian preference laws" means section 12 of the Act of June 18, 1934 (25 U.S.C. 472; 48 Stat. 986) or any other provision of law granting a preference to Indians in promotions and other personnel actions, except that such term shall not be considered to include section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b); 88 Stat. 2295).

(g) Subject to the authority of the Civil Service Commission to determine finally the applicability of chapter 51 of title 5, United States Code, to specific positions and employees in the executive branch, the Secretary shall determine in accordance with subsection (a)(1) the applicability or inapplicability of such chapter to positions and employees in the Bureau.

(h)(1)(A) Except as otherwise provided in this section, the Secretary shall fix the basic compensation or annual salary rate for educators and education positions at rates comparable to the rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 is applicable or on the basis of the Federal Wage System schedule in effect for the locality.

(B)[1] By no later than October 28, 1988, the Secretary shall establish, for contracts for the 1991–1992 academic year, and thereafter, the rates of basic compensation, or annual salary rates, for the positions of teachers and counselors (including dormitory counselors and home-living counselors) at the rates of basic compensation applicable (on the date of enactment of such Amendments and thereafter) to comparable positions in overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act, unless the Secretary establishes such rates within such 6-month period through collective bargaining with the appropriate union representative of the education employees that is recognized by the Bureau.

(C) By no later than October 28, 1988, the Secretary shall establish the rates of basic compensation or annual salary rates for the positions of teachers and counselors (including dormitory and home-living counselors)—

(i) for contracts for the 1989–1990 academic year, at rates which reflect one-third of the changes in the rates applicable to such positions on April 28, 1988, that must be made to conform the rates to the rates established under subparagraph (B) for such positions for contracts for the 1991–1992 academic year, and

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[1] So in original. Margins are incorrect for subparagraphs (B) through (F).

(ii) for contracts for the 1990–1991 academic year, at rates which reflect two-thirds of such changes.

(D) The establishment of rates of basic compensation and annual salary rates by the Secretary under subparagraphs (B) and (C) shall not preclude the use of regulations and procedures used by the Bureau before the enactment of the Indian Education Amendments of 1988 in making determinations regarding promotions and advancements through levels of pay that are based on the merit, education, experience, or tenure of the educator.

(E)(i) Except as provided in clause (ii), the establishment of rates of basic compensation and annual salary rates by the Secretary under subparagraphs (B) and (C) shall not affect the continued employment or compensation of an educator who was employed in an education position on October 31, 1979, and who did not make the election under paragraph (2) of subsection (o).

(ii) Any individual described in clause (i) may, during the 5-year period beginning on the date on which the Secretary establishes rates of basic compensation and annual salary rates under subparagraph (B), make an irrevocable election to have the basic compensation rate or annual salary rate of such individual determined in accordance with this paragraph.

(iii) If an individual makes the election described in clause (ii), such election shall not affect the application to the individual of the same retirement system and leave system that applies to the individual during the fiscal year preceding the fiscal year in which such election is made, except that the individual must use leave accrued during a contract period by the end of that contract period.

(F) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each of the fiscal years 1990, 1991, and 1992 a written statement by the Secretary which specifies—

(i) the amount of funds the Secretary needs to pay basic compensation and the annual salaries of educators for such fiscal year, and

(ii) the amount of funds the Secretary estimates would be needed to pay basic compensation and the annual salaries of educators for such fiscal year if the amendments made to this paragraph by the Indian Education Amendments of 1988 had not been enacted.

(2) Each educator employed in an education position in Alaska shall be paid a cost-of-living allowance equal to 25 per centum of the rate of basic compensation to which such educator is entitled.

(3)(A) The Secretary may pay a postdifferential not to exceed 25 per centum of the rate of basic compensation, on the basis of conditions of environment or work which warrant additional pay as a recruitment and retention incentive.

(B)(i) Upon the request of the supervisor and the local school board of a Bureau school, the Secretary shall grant the supervisor of the school authorization to provide one or more post differentials under subparagraph (A) unless the Secretary determines for clear and convincing reasons (and advises the board in writing of those reasons) that certain of the requested post differentials should be disapproved or decreased because there is no disparity of compensation for the involved employees or positions in the Bureau school, as compared with the nearest public school, that is either—

(I) at least 5 percent, or

(II) less than 5 percent and affects the recruitment or retention of employees at the school.

The request under this subparagraph shall be deemed granted as requested at the end of the 60th day after the request is received in the Central Office of the Bureau unless before that time it is approved, approved with modification, or disapproved by the Secretary.

(ii) The Secretary or the supervisor of a Bureau school may discontinue or decrease a post differential authorized by reason of this subparagraph at the beginning of a school year after either—

(I) the local school board requests that it be discontinued or decreased, or

(II) the Secretary or the supervisor determines for clear and convincing reasons (and advises the board in writing of those reasons) that there is no disparity of compensation that would affect the recruitment or retention of employees at the school after the differential is discontinued or decreased.

(iii) On or before February 1 of each year, the Secretary shall submit to Congress a report describing the requests and grants of authority under this subparagraph during the previous fiscal year and listing the positions contracted under those grants of authority.

(i) Any individual—

(1) who on the date of enactment of this Act is holding a position which is determined under subsection (f) to be an education position and who elects under subsection (o)(2) to be covered under the provisions of this section, or

(2) who is an employee of the Federal Government or the municipal government of the District of Columbia and is transferred, promoted, or reappointed, without break in service, from a position under a different leave system to an education position,

shall be credited for the purpose of the leave system provided under regulations prescribed pursuant to subsection (b)(10), with the annual and sick leave to his credit immediately before the effective date of such election, transfer, promotion, or reappointment.

(j) Upon termination of employment with the Bureau, any annual leave remaining to the credit of an individual within the purview of this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, United States Code, except that leave earned or accrued under regulations prescribed pursuant to subsection (b)(10) shall not be so liquidated.

(k) In the case of any educator who is transferred, promoted, or reappointed, without break in service, to a position in the Federal Government under a different leave system, any remaining leave to the credit of such person earned or credited under the regulations prescribed pursuant to subsection (b)(10) shall be transferred to his credit in the employing agency on an adjusted basis in accordance with regulations which shall be prescribed by the Civil Service Commission.

(l) An educator who voluntarily terminates employment with the Bureau before the expiration of the existing employment contract between such educator and the Bureau shall not be eligible to be employed in another education position in the Bureau during the remainder of the term of such contract.

(m) In the case of any educator employed in an education position described in subsection (n)(1)(A) who—

(1) is employed at the close of a school year,

(2) agrees in writing to serve in such a position for the next school year, and

(3) is employed in another position during the recess period immediately preceding such next school year, or during such recess period receives additional compensation referred to in subsection (g)(2) or (g)(3)[1], section 5533 of title 5, United States Code, relating to dual compensation, shall not apply to such educator by reason of any such employment during a recess period for[2] any such receipt of additional compensation.

(n) For the purpose of this section—

(1) The term "education position" means a position in the Bureau the duties and responsibilities of which—

(A) are performed on a school-year basis principally in a Bureau school and involve—

(i) classroom or other instruction or the supervision or direction of classroom or other instruction;

(ii) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education;

(iii) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(iv) support services at, or associated with, the site of the school; or

(B) are performed at the agency level of the Bureau and involve the implementation of education-related programs other than the position for agency superintendent for education.

(2) The term "educator" means an individual whose services are required, or who is employed, in an education position.

(o)(1) Subsections (a) through (n) of this section apply to an educator hired after November 1, 1979 (and to an educator who elected application under paragraph (2)) and to the position in which such individual is employed. Subject to paragraph (2), the enactment of this Act shall not affect the continued employment of an individual employed on October 31, 1979[1] in an education position, or such individual's right to receive the compensation attached to such position.

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[1] So in original. Probably should be "subsection (h)(2) or (h)(3)".

[2] So in original. Probably should be "or".

(2) Any individual employed in an education position on October 31, 1979, may, not later than November 1, 1983, make an irrevocable election to be covered under the provisions of subsection (a) through (n) of this section.

(p)(1) An educator who was employed in an education position on October 31, 1979, who was eligible to make an election under paragraph (2) of subsection (o) at that time, and who did not make the election under paragraph (2) of subsection (o), may not be placed on furlough (within the meaning of section 7511(a)(5) of title 5, United States Code) without the consent of such educator for an aggregate of more than 4 weeks within the same calendar year, unless—

(A) the supervisor, with the approval of the local school board (or of the agency superintendent for education upon appeal under paragraph (2)), of the Bureau school at which such educator provides services determines that a longer period of furlough is necessary due to an insufficient amount of funds available for personnel compensation at such school, as determined under the financial plan process as determined under section 1129(b) of this Act, and

(B) all educators (other than principals and clerical employees) providing services at such Bureau school are placed on furloughs of equal length, except that the supervisor, with the approval of the local school board (or of the agency superintendent for education upon appeal under paragraph (2)), may continue one or more educators in pay status if (i) they are needed to operate summer programs, attend summer training sessions, or participate in special activities including (but not limited to) curriculum development committees, and (ii) they are selected based upon their qualifications, after public notice of the minimum qualifications reasonably necessary and without discrimination as to supervisory, nonsupervisory, or other status of the educators who apply.

(2) The supervisor of a Bureau school may appeal to the appropriate agency superintendent for education any refusal by the local school board to approve any determination of the supervisor that is described in paragraph (1)(A) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be approved. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the superintendent may, for good cause, approve the determination of the supervisor. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such local school board

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[1] So in law. "1979" probably should be followed by a comma.

and to the supervisor identifying the reasons for approving such determination.

(25 U.S.C. 2011) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1131, 92 Stat. 2322; amended Oct. 19, 1984, P.L. 98–511, sec. 507(b), 98 Stat. 2396; amended Apr. 28, 1988, P.L. 100–297, secs. 5112, 5114, 5115, 102 Stat. 377–380; amended Sept. 9, 1988, P.L. 100–427, sec. 9, 101 Stat. 1606–1607.

MANAGEMENT INFORMATION SYSTEM2SEC. 1132

SEC. 1132. The Secretary shall establish within the Office, within one year after the date of the enactment of the Indian Education Amendments of 1984, a computerized management information system, which shall provide information to the Office. Such information shall include but shall not be limited to—

(1) student enrollment;
(2) curriculum;
(3) staff;
(4) facilities;
(5) community demographics;
(6) student assessment information; and
(7) information on the administrative and program costs attributable to each Bureau program, divided into discreet[1] elements.

(25 U.S.C. 2012) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1132, 92 Stat. 2326; amended Aug. 6, 1979, P.L. 96–46, sec. 2(b)(9), 93 Stat. 341; amended Oct. 19, 1984, P.L. 98–511, sec. 508, 98 Stat. 2397.

BUREAU EDUCATION POLICIES

SEC. 1133. Within one hundred and eighty days of the date of enactment of this Act, the Secretary shall develop, publish in the Federal Register, and submit to all agency and area offices of the Bureau, all tribal governments, and the appropriate committees of the Congress, a draft set of education policies, procedures, and practices for education-related action of the Bureau. The Secretary shall, within one year of the date of enactment of this Act, provide that such uniform policies, procedures, and practices shall be finalized and promulgated. Thereafter, such policies, procedures, and practices and their periodic revisions, shall serve as the foundation for future Bureau actions in education.

(25 U.S.C. 2013) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1133, 92 Stat. 2327.

UNIFORM EDUCATION PROCEDURES AND PRACTICES

SEC. 1134. The Secretary shall cause the various divisions of the Bureau to formulate uniform procedures and practices with respect to such concerns of those divisions as relate to education, and shall report such practices and procedures to the Congress.

(25 U.S.C. 2014) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1134, 92 Stat. 2327.

RECRUITMENT OF INDIAN EDUCATORS

SEC. 1135. The Secretary shall institute a policy for the recruitment of qualified Indian educators and a detailed plan to promote employees from within the Bureau. Such plan shall include opportunities for acquiring work experience prior to actual work assignment.

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[1] So in original. Probably should be "discrete".

(25 U.S.C. 2015) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1135, 92 Stat. 2327.

ANNUAL REPORT

SEC. 1136. (a) The Secretary shall submit to each appropriate committee of the Congress a detailed annual report on the state of education within the Bureau and any problems encountered in the field of education during the year. Such report shall contain suggestions for improving the Bureau educational system and increasing local Indian control of such system. Such report shall also include the current status of tribally controlled community colleges. The annual budget submission for the Bureau's education programs shall, among other things, include (1) information on the funds provided previously private schools under section 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458d; 88 Stat. 2216) and recommendations with respect to the future use of such funds; (2) the needs and costs of operation and maintenance of tribally controlled community colleges eligible for assistance under the Tribally Controlled Community College Assistance Act of 1978 (92 Stat. 1325; 25 U.S.C. 1801 et seq.) and recommendations with respect to meeting such needs and costs; and (3) the plans required by section 1121(f), and 1122(c);[1] and 1125(b) of this Act (25 U.S.C. 2001(f), 2002(c), and 2005(b)).

(b) The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits are conducted of each Bureau school at least once in every three years. Audits of Bureau schools shall be based upon the extent to which such school has complied with its local financial plan under section 1129.

(25 U.S.C. 2016) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1136, 92 Stat. 2327; amended Dec. 21, 1982, P.L. 97–375, sec 208(b), 96 Stat. 1824; amended Oct. 19, 1984, P.L. 98–511, sec. 509, 98 Stat. 2397; amended Aug. 15, 1985, P.L. 99–89, sec. 7, 99 Stat. 383.

RIGHTS OF INDIAN STUDENTS

SEC. 1137. Within six months of the date of enactment of this Act, the Secretary shall prescribe such rules and regulations as are necessary to insure the constitutional and civil rights of Indian students attending Bureau schools, including, but not limited to, their right to privacy under the laws of the United States, their right to freedom of religion and expression and their right to due process in connection with disciplinary actions, suspensions, and expulsions.

(25 U.S.C. 2017) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1137, 92 Stat. 2327.

REGULATIONS

SEC. 1138. Regulations required to be adopted under sections 1126 through 1137 of this Act shall be deemed rules of general applicability prescribed for the administration of an applicable program for the purposes of section 431 of the General Education Provisions Act and shall be promulgated, submitted for congressional review, and take effect in accordance with the provisions of such section. Such regulations shall contain, immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority upon which such provision is based.

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[1] So in original. The semicolon probably should be a comma.

(25 U.S.C. 2018) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1138, 92 Stat. 2327; amended Oct. 19, 1984, P.L. 98–511, sec. 510, 98 Stat. 2397.

DEFINITIONS

SEC. 1139. For the purpose of this title—

(1) the term "agency school board" means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Secretary in consultation with the affected tribes, except that, in agencies serving a single school, the school board of such school shall fulfill these duties;

(2) the term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior;

(3) the term "Bureau funded school" means—

(A) a Bureau school;

(B) a contract school; or

(C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988;

(4) the term "Bureau school" means a Bureau operated elementary or secondary day or boarding school or a Bureau operated dormitory for students attending a school other than a Bureau school;

(5) the term "contract school' means an elementary or secondary school or a dormitory which receives financial assistance for its operation under a contract or agreement with the Bureau under section 102, 103(a), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(a), and 458d);

(6) the term "financial plan" means a plan of services to be provided by each Bureau school;

(7) the term "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized Indian tribes;

(8) the term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State, and includes any State agency which directly operates and maintains facilities for providing free public education;

(9) the term "local school board", when used with respect to a Bureau school, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that in schools serving a substantial number

of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected; and the number of such members shall be determined by the Secretary in consultation with the affected tribes;

(10) the term "Office" means the Office of Indian Education Programs within the Bureau;

(11) the term "Secretary" means the Secretary of the Interior;

(12) the term "supervisor" means the individual in the position of ultimate authority at a Bureau school; and

(13) the term "tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(25 U.S.C. 2019) Enacted Nov. 1, 1978, P.L. 95–561, sec. 1139, 92 Stat. 2328; amended Apr. 28, 1988, P.L. 100–297, sec. 5117, 102 Stat. 382; amended Sept. 9, 1988, P.L. 100–427, sec. 1(c), 102 Stat. 1603; amended May 24, 1990, P.L. 101–301, sec. 5(a), 104 Stat. 207.

VOLUNTARY SERVICES

SEC. 1140. Notwithstanding section 1342 of title 31, United States Code, the Secretary may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools. Nothing in this title shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees. An individual providing volunteer services under this section is a Federal employee only for purposes of chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

(25 U.S.C. 2020) Enacted Oct. 19, 1984, P.L. 98–511, sec. 511, 98 Stat. 2398; amended Aug. 15, 1985, P.L. 99–89, sec. 8, 99 Stat. 383.

PRORATION OF PAY

SEC. 1140A. (a) Notwithstanding any other provision of law, including laws relating to dual compensation, the Secretary, at the election of the employee, shall prorate the salary of an employee employed in an education position for the academic school-year over the entire twelve month period. Each educator employed for the academic school-year shall annually elect to be paid on a twelve month basis or for those months while school is in session. No educator shall suffer a loss of pay or benefits, including benefits under unemployment or other Federal or federally-assisted programs, because of such election.

(b) During the course of such year the employee may change election once.

(c) That portion of the employee's pay which would be paid between academic school years may be paid in lump sum at the election of the employee.

(d) For the purposes of this section the terms "educator" and "education position" have the meaning contained in section 1131(n)(1) and (n)(2) of this title. This section applies to those individuals employed under the provisions of section 1131 of this title or title 5, United States Code.

(25 U.S.C. 2021) Enacted Oct. 19, 1984, P.L. 98–511, sec. 512, 98 Stat. 2398; amended Aug. 15, 1985, P.L. 99–89, sec. 9(a)(1), (b), 99 Stat. 383.

EXTRACURRICULAR ACTIVITIES

SEC. 1140B. (a) Notwithstanding any other provision of law, the Secretary may provide, for each Bureau area, a stipend in lieu of overtime premium pay or compensatory time off. Any employee of the Bureau who performs additional activities to provide services to students or otherwise support the school's academic and social programs may elect to be compensated for all such work on the basis of the stipend. Such stipend shall be paid as a supplement to the employee's base pay.

(b) If an employee elects not to be compensated through the stipend established by this section, the appropriate provisions of title 5, United States Code, shall apply.

(c) This section applies to all Bureau employees, whether employed under section 1131 of this title or title 5, United States Code.

(25 U.S.C. 2022) Enacted Oct. 19, 1984, P.L. 98–511, sec. 512, 98 Stat. 2398; amended Aug. 15, 1985, P.L. 99–89, sec. 9(a)(1), (c), 99 Stat. 383.

EARLY CHILDHOOD DEVELOPMENT PROGRAM

SEC. 1141. (a) The Secretary shall provide grants to tribes, tribal organizations, and consortia of tribes and tribal organizations to fund early childhood development programs that are operated by such tribes, organizations, or consortia.

(b)(1) The total amount of the grants provided under subsection (a) with respect to each tribe, tribal organization, or consortium of tribes or tribal organizations for each fiscal year shall be equal to the amount which bears the same relationship to the total amount appropriated under the authority of subsection (f) for such fiscal year (less amounts provided under subsection (e)) as—

(A) the total number of children under 6 years of age who are members of—

(i) such tribe,

(ii) the tribe that authorized such tribal organization, or

(iii) any tribe that—

(I) is a member of such consortium, or

(II) authorizes any tribal organization that is a member of such consortium, bears to

(B) the total number of all children under 6 years of age who are members of any tribe that—

(i) is eligible to receive funds under subsection (a),

(ii) is a member of a consortium that is eligible to receive such funds, or

(iii) authorizes a tribal organization that is eligible to receive such funds.

(2) No grant may be provided under subsection (a)—

(A) to any tribe that has less than 500 members,

(B) to any tribal organization which is authorized—

(i) by only one tribe that has less than 500 members, or

(ii) by one or more tribes that have a combined total membership of less than 500 members, or

(C) to any consortium composed of tribes, or tribal organizations authorized by tribes, that have a combined total tribal membership of less than 500 members.

(c)(1) A grant may be provided under subsection (a) to a tribe, tribal organization, or consortia of tribes and tribal organizations only if the tribe, organization or consortia submits to the Secretary an application for the grant at such time and in such form as the Secretary shall prescribe.

(2) Applications submitted under paragraph (1) shall set forth the early childhood development program that the applicant desires to operate.

(d) The early childhood development programs that are funded by grants provided under subsection (a)—

(1) shall coordinate existing programs and may provide services that meet identified needs of parents and children under 6 years of age which are not being met by existing programs, including—

(A) prenatal care,

(B) nutrition education,

(C) health education and screening,

(D) educational testing, and

(E) other educational services,

(2) may include instruction in the language, art, and culture of the tribe, and

(3) shall provide for periodic assessment of the program.

(e) The Secretary shall, out of funds appropriated under the authority of subsection (f), include in the grants provided under subsection (a) amounts for administrative costs incurred by the tribe or tribal organization in establishing and maintaining the early childhood development program.

(f) There are authorized to be appropriated for fiscal year 1989, and for each succeeding fiscal year, $15,000,000 for the purpose of carrying out the provisions of this section.

(25 U.S.C. 2022a) Enacted Apr. 28, 1988, P.L. 100–297, sec. 5116(2), 102 Stat. 381.

TRIBAL DEPARTMENTS OF EDUCATION

SEC. 1142. (a) Subject to the availability of appropriations, the Secretary shall provide grants and technical assistance to tribes for the development and operation of tribal departments of education for the purpose of planning and coordinating all educational programs of the tribe.

(b) Grants provided under this section shall—

(1) be based on applications from the governing body of the tribe,

(2) reflect factors such as geographic and population diversity,

(3) facilitate tribal control in all matters relating to the education of Indian children on Indian reservations and on former Indian reservations in Oklahoma,

(4) provide for the development of coordinated educational programs on Indian reservations (including all preschool, elementary, secondary, and higher or vocational educational programs funded by tribal, Federal, or other sources) by encouraging tribal administrative support of all Bureau funded educational programs as well as encouraging tribal cooperation and coordination with all educational programs receiving financial support from State agencies, other Federal agencies, or private entities,

(5) provide for the development and enforcement of tribal educational codes, including tribal educational policies and tribal standards applicable to curriculum, personnel, students, facilities, and support programs, and

(6) otherwise comply with regulations for grants under section 104(a)[1] of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450h) that are in effect on the date application for such grants are made.

(c)(1) In approving and funding applications for grants under this section, the Secretary shall give priority to any application that—

(A) includes assurances from the majority of Bureau funded schools located within the boundaries of the reservation of the applicant that the tribal department of education to be funded under this section will provide coordinating services and technical assistance to all of such schools, including (but not limited to) the submission to each applicable agency of a unified application for funding for all of such schools which provides that—

(i) no administrative costs other than those attributable to the individual programs of such schools will be associated with the unified application, and

(ii) the distribution of all funds received under the unified application will be equal to the amount of funds provided by the applicable agency to which each of such schools is entitled under law,

(B) includes assurances from the tribal governing body that the tribal department of education funded under this section will administer all contracts or grants (except those covered by the other provisions of this title and the Tribally Controlled Community College Assistance Act of 1978) for education programs administered by the tribe and will coordinate all of the programs to the greatest extent possible,

(C) includes assurances for the monitoring and auditing by or through the tribal department of education of all education programs for which funds are provided by contract or grant to ensure that the programs meet the requirements of law, and

(D) provides a plan and schedule for—

(i) the assumption over the term of the grant by the tribal department of education of all assets and functions of the Bureau agency office associated with the tribe, insofar as those responsibilities relate to education, and

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[1] So in law. Probably should be "103(a)" since section 104 was redesignated as 103 by section 202(a) of P.L. 100–472, 102 Stat. 2289.

(ii) the termination by the Bureau of such operations and office at the time of such assumption,

but when mutually agreeable between the tribal governing body and the Assistant Secretary, the period in which such assumption is to occur may be modified, reduced, or extended after the initial year of the grant.

(2) Subject to the availability of appropriated funds, grants provided under this section shall be provided for a period of 3 years and the grant may, if performance by the grantee is satisfactory to the Secretary, be renewed for additional 3-year terms.

(d) The Secretary shall not impose any terms, conditions, or requirements on the provision of grants under this section that are not specificd in this section.

(e) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

(25 U.S.C. 2022b) Enacted Apr. 28, 1988, P.L. 100–297, sec. 5119, 102 Stat. 383.

SEC. 1143. Repealed.

(25 U.S.C. 2023) Enacted Oct. 19, 1984, P.L. 98–511, sec. 512, 98 Stat. 2398; repealed Aug. 15, 1985, P.L. 99–89, sec. 9(a)(2), 99 Stat. 383.

Tribally Controlled Schools Act of 1988

(Part B of Title V of Public Law 100–297)

PART B—TRIBALLY CONTROLLED SCHOOL GRANTS

SEC. 5201. SHORT TITLE.

This part may be cited as the "Tribally Controlled Schools Act of 1988".

(25 U.S.C. 2501 note)

SEC. 5202. FINDINGS.

The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, Indians, finds that—

(1) the Indian Self-Determination and Education Assistance Act, which was a product of the legitimate aspirations and a recognition of the inherent authority of Indian nations, was and is a crucial positive step towards tribal and community control;

(2) the Bureau of Indian Affairs' administration and domination of the contracting process under such Act has not provided the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities;

(3) Indians will never surrender their desire to control their relationships both among themselves and with the non-Indian governments, organizations, and persons;

(4) true self-determination in any society of people is dependent upon an educational process which will ensure the development of qualified people to fulfill meaningful leadership roles;

(5) the Federal administration of education for Indian children has not effected the desired level of educational achievement nor created the diverse opportunities and personal satisfaction which education can and should provide;

(6) true local control requires the least possible Federal interference; and

(7) the time has come to enhance the concepts made manifest in the Indian Self-Determination and Education Assistance Act.

(25 U.S.C. 2501)

SEC. 5203. DECLARATION OF POLICY.

(a) RECOGNITION.—The Congress recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational services so as to render such services more responsive to the needs and desires of those communities.

(b) COMMITMENT.—The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy for education which will deter further perpetuation of Federal bureaucratic domination of programs.

(c) NATIONAL GOAL.—The Congress declares that a major national goal of the United States is to provide the resources, processes, and structures which will enable tribes and local communities to effect the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(d) EDUCATIONAL NEEDS.—The Congress affirms the reality of the special and unique educational needs of Indian peoples, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities. These may best be met through a grant process.

(e) FEDERAL RELATIONS.—The Congress declares its commitment to these policies and its support, to the full extent of its responsibility, for Federal relations with the Indian Nations.

(f) TERMINATION.—The Congress hereby repudiates and rejects House Concurrent Resolution 108 of the 83rd Congress and any policy of unilateral termination of Federal relations with any Indian Nation.

(25 U.S.C. 2502)

SEC. 5204. GRANTS AUTHORIZED.

(a) IN GENERAL.—

(1) The Secretary shall provide grants to Indian tribes, and tribal organizations, that—

(A) operate contract schools under title XI of the Education Amendments of 1978 and notify the Secretary of their election to operate the schools with assistance under this part rather than continuing as contract schools;

(B) operate other tribally controlled schools eligible for assistance under this part and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants; or

(C) elect to assume operation of Bureau schools with assistance under this part and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants.

(2) Grants provided under this part shall be deposited into the general operating fund of the tribally controlled school with respect to which the grant is provided.

(3)(A) Except as otherwise provided in this paragraph, grants provided under this part shall be used to defray, at the discretion of the school board of the tribally controlled school with respect to which the grant is provided, any expenditures for education-related activities for which any funds that compose the grant may be used under the laws described in section 5205(a), including but not limited to, expenditures for—

(i) school operations, academic, educational, residential, guidance and counseling, and administrative purposes, and

(ii) support services for the school, including transportation.

(B) Grants provided under this part may, at the discretion of the school board of the tribally controlled school with respect to which such grant is provided, be used to defray operation and maintenance expenditures for the school if any funds for the operation and maintenance of the school are allocated to the school under the provisions of any of the laws described in section 5205(a).

(C) If funds allocated to a tribally controlled school under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, the Individuals with Disabilities Education Act, or any Federal education law other than title XI of the Education Amendments of 1978 are included in a grant provided under this part, a portion of the grant equal to the amount of the funds allocated under such law shall be expended only for those activities for which funds provided under such law may be expended under the terms of such law.

(b) LIMITATIONS.—

(1) No more than one grant may be provided under this part with respect to any Indian tribe or tribal organization for any fiscal year.

(2) Funds provided under any grant made under this part may not be used in connection with religious worship or sectarian instruction.

(3) Funds provided under any grant made under this part may not be expended for administrative costs (as defined under section 1128A(e)(1) of the Education Amendments of 1978) in excess of the amount generated for such costs under section 1128A of such Act.

(c) LIMITATION ON TRANSFER OF FUNDS AMONG SCHOOLSITES.—

(1) In the case of a grantee which operates schools at more than one schoolsite, the grantee may expend no more than the lesser of—

(A) 10 percent of the funds allocated for a schoolsite under section 1128 of the Education Amendments of 1978, or

(B) $400,000 of such funds,

at any other schoolsite.

(2) For purposes of this subsection, the term "schoolsite" means the physical location and the facilities of an elementary or secondary educational or residential program operated by, or under contract with, the Bureau for which a discreet student count is identified under the funding formula established under section 1128 of the Education Amendments of 1978.

(d) NO REQUIREMENT TO ACCEPT GRANTS.—Nothing in this part may be construed—

(1) to require a tribe or tribal organization to apply for or accept, or

(2) to allow any person to coerce any tribe or tribal organization into applying for, or accepting,

a grant under this part to plan, conduct, and administer all of, or any portion of, any Bureau program. Such applications, and the timing of such applications, shall be strictly voluntary. Nothing in this part may be construed as allowing or requiring any grant with any entity other than the entity to which the grant is provided.

(e) NO EFFECT ON FEDERAL RESPONSIBILITY.—Grants provided under this part shall not terminate, modify, suspend, or reduce the responsibility of the Federal Government to provide a program.

(f) RETROCESSION.—Whenever an[1] tribal governing body requests retrocession of any program for which assistance is provided under this part, such retrocession shall become effective upon a date specified by the Secretary not more than 120 days after the date on which the tribal governing body requests the retrocession, or such later date as may be mutually agreed upon by the Secretary and the tribal governing body. If such a program is retroceded, the Secretary shall provide to any Indian tribe served by such program at least the same quantity and quality of services that would have been provided under such program at the level of funding provided under this part prior to the retrocession.

The tribe requesting retrocession shall specify whether the retrocession is to status as a Bureau school or as a contract school under title XI of the Education Amendments of 1978. Except as otherwise determined by the Secretary, the tribe or tribal organization operating the program to be retroceded must transfer to the Secretary (or to the tribe or tribal organization which will operate the program as a contract school) the existing equipment and materials which were acquired—

(1) with assistance under this part, or

(2) upon assumption of operation of the program under this part if it was a Bureau funded school under title XI of the Education Amendments of 1978 before receiving assistance under this part.

(g) NO TERMINATION FOR ADMINISTRATIVE CONVENIENCE.—Grants provided under this Act may not be terminated, modified, suspended, or reduced only for the convenience of the administering agency.

(25 U.S.C. 2503)

SEC. 5205. COMPOSITION OF GRANTS.

(a) IN GENERAL.—The grant provided under this part to an Indian tribe or tribal organization for any fiscal year shall consist of—

(1) the total amount of funds allocated for such fiscal year under sections 1128 and 1128A of the Education Amendments of 1978 with respect to the tribally controlled schools eligible for assistance under this part that are operated by such Indian tribe or tribal organization, including, but not limited to, funds

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[1] So in original. Probably should be "a".

provided under such sections, or under any other provision of law, for transportation costs,

(2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section 105 of the Indian Self-Determination Act (25 U.S.C. 450j), or any other provision of law, other facilities accounts for such schools for such fiscal year (including but not limited to all those referenced under section 1216(d) of the Education Amendments of 1978, or any other law), and

(3) the total amount of funds provided under—

(A) chapter 1 of title I of the Elementary and Secondary Education Act of 1965,

(B) the Individuals with Disabilities Education Act, and

(C) any other Federal education law,

that are allocated to such schools for such fiscal year.

(b) SPECIAL RULES.—

(1) In the allocation of funds under sections 1128, 1128A, and 1126(d) of the Education Amendments of 1978, tribally controlled schools for which grants are provided under this part shall be treated as contract schools.

(2) In the allocation of funds provided under—

(A) chapter 1 of title I of the Elementary and Secondary Education Act of 1965,

(B) the Individuals with Disabilities Education Act, and

(C) any other Federal education law,

that are distributed through the Bureau, tribally controlled schools for which grants are provided under this part shall be treated as Bureau schools.

(3)(A) Funds allocated to a tribally controlled school by reason of paragraph (1) or (2) shall be subject to the provisions of this part and shall not be subject to any additional restriction, priority, or limitation that is imposed by the Bureau with respect to funds provided under—

(i) chapter 1 of title I of the Elementary and Secondary Education Act of 1965,

(ii) the Individuals with Disabilities Education Act, or

(iii) any Federal education law other than title XI of the Education Amendments of 1978.

(B) Indian tribes and tribal organizations to which grants are provided under this part, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i), (ii), or (iii) of subparagraph (A).

(4) Notwithstanding the provision of paragraph[1] 5204(a)(2) of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2503(a)(2)), with respect to funds from facilities improvement and repair, alteration and renovation (major or minor), health

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[1] So in original. Probably should be "section".

and safety, or new construction accounts included in the grant under such paragraph[1] (a)(2), the grantee shall maintain a separate account for such funds and shall, at the end of the period designated for the work covered by the funds received, render a separate accounting of the work done and the funds used to the Secretary. Funds received from these accounts may only be used for the purposes for which they were appropriated and for the work encompassed by the application or submission under which they were received. Where the appropriations measure or the application submission does not stipulate a period for the work covered by the funds so designated, the Secretary and the grantee shall consult and determine such a period prior to the transfer of funds: *Provided,* That such period may be extended upon mutual agreement.

(25 U.S.C. 2504)

SEC. 5206. ELIGIBILITY FOR GRANTS.

(a) IN GENERAL.—

(1) A tribally controlled school is eligible for assistance under this part if the school—

(A) was, on April 28, 1988, a contract school under title XI of the Education Amendments of 1978 and the tribe or tribal organization operating the school submits to the Secretary a written notice of election to receive a grant under this part,

(B) was a Bureau school under title XI of the Education Amendments of 1978 and has met the requirements of subsection (b),

(C) is a school for which the Bureau has not provided funds, but which has met the requirements of subsection (c), or

(D) is a school with respect to which an election has been made under paragraph (2) and which has met the requirements of subsection (b).

(2) Any application which has been submitted under the Indian Self-Determination and Education Assistance Act by an Indian tribe for a school which is not in operation on the date of enactment of this Act shall be reviewed under the guidelines and regulations for applications submitted under the Indian Self-Determination and Education Assistance Act that were in effect at the time the application was submitted, unless the Indian tribe or tribal organization elects to have the application reviewed under the provisions of subsection (b).

(b) ADDITIONAL REQUIREMENTS FOR BUREAU SCHOOLS AND CERTAIN ELECTING SCHOOLS.—

(1) A school that was a Bureau funded school under title XI of the Education Amendments of 1978 on April 28, 1988.,[2] and any school with respect to which an election is made under subsection (a)(2), meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting that the Secretary—

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[1] So in original. Probably should be "section 5204(a)(2)".

[2] So in original.

(i) transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school, and

(ii) make a determination of whether the school is eligible for assistance under this part, and

(B) the Secretary makes a determination that the school is eligible for assistance under this part.

(2)(A) By no later than the date that is 120 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine—

(i) if the school is not being operated by the Indian tribe or tribal organization, whether to transfer operation of the school to the Indian tribe or tribal organization, and

(ii) whether the school is eligible for assistance under this part.

(B) In considering applications submitted under paragraph (1)(A), the Secretary—

(i) shall transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school, and

(ii) shall determine that the school is eligible for assistance under this part,

unless the Secretary finds by clear and convincing evidence that the services to be provided by the Indian tribe or tribal organization will be deleterious to the welfare of the Indians served by the school.

(C) In considering applications submitted under paragraph (1)(A), the Secretary shall consider whether the Indian tribe or tribal organization would be deficient in operating the school with respect to—

(i) equipment,

(ii) bookkeeping and accounting procedures,

(iii) substantive knowledge of operating the school,

(iv) adequately trained personnel, or

(v) any other necessary components in the operation of the school.

(c) ADDITIONAL REQUIREMENTS FOR A SCHOOL WHICH IS NOT A BUREAU FUNDED SCHOOL.—

(1) A school which is not a Bureau funded school under title XI of the Education Amendments of 1978 meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting a determination by the Secretary of whether the school is eligible for assistance under this part, and

(B) the Secretary makes a determination that the school is eligible for assistance under this part.

(2)(A) By no later than the date that is 180 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine whether the school is eligible for assistance under this part.

(B) In making the determination under subparagraph (A), the Secretary shall give equal consideration to each of the following factors:

(i) with respect to the applicant's proposal—

(I) the adequacy of facilities or the potential to obtain or provide adequate facilities;

(II) geographic and demographic factors in the affected areas;

(III) adequacy of applicant's program plans;

(IV) geographic proximity of comparable public education; and

(V) the needs as expressed by all affected parties, including but not limited to students, families, tribal governments at both the central and local levels, and school organizations; and

(ii) with respect to all education services already available—

(I) geographic and demographic factors in the affected areas;

(II) adequacy and comparability of programs already available;

(III) consistency of available programs with tribal education codes or tribal legislation to education; and

(IV) the history and success of these services for the proposed population to be served, as determined from all factors and not just standardized examination performance.

(C) The Secretary may not make a determination under this paragraph that is primarily based upon the geographic proximity of comparable public education.

(D) Applications submitted under paragraph (1)(A) shall include information on the factors described in subparagraph (B)(i), but the applicant may also provide the Secretary such information relative to the factors described in subparagraph (B)(ii) as the applicant considers appropriate.

(E) If the Secretary fails to make a determination under subparagraph (A) with respect to an application within 180 days after the date on which the Secretary received the application, the Secretary shall be treated as having made a determination that the tribally controlled school is eligible for assistance under the title and the grant shall become effective 18 months after the date on which the Secretary received the application, or an earlier date, at the Secretary's discretion.

(d) APPLICATIONS AND REPORTS.—

(1) All applications and reports submitted to the Secretary under this part, and any amendments to such applications or reports, shall be filed with the agency or area education officer designated by the Director of the Office of Indian Education of the Bureau of Indian Affairs. The date on which such filing occurs shall, for purposes of this part, be treated as the date on which the application or amendment is submitted to the Secretary.

(2) Any application that is submitted under this part shall be accompanied by a document indicating the action taken by the tribal governing body in authorizing such application.

(e) EFFECTIVE DATE FOR APPROVED APPLICATIONS.—Except as provided in subsection (c)(2)(E), a grant provided under this part, and any transfer of the operation of a Bureau school made under subsection (b), shall become effective beginning with the academic year succeeding the fiscal year in which the application for the grant or transfer is made, or at an earlier date determined by the Secretary.

(f) DENIAL OF APPLICATIONS.—

(1) Whenever the Secretary declines to provide a grant under this part, to transfer operation of a Bureau school under subsection (b), or determines that a school is not eligible for assistance under this part, the Secretary shall—

(A) state the objections in writing to the tribe or tribal organization within the allotted time,

(B) provide assistance to the tribe or tribal organization to overcome all stated objections,

(C) provide the tribe or tribal organization a hearing on the record, under the same rules and regulations that apply under the Indian Self-Determination and Education Assistance Act, and

(D) provide an opportunity to appeal the objection raised.

(2) The Secretary shall reconsider any amended application submitted under this part within 60 days after the amended application is submitted to the Secretary.

(g) REPORT.—The Bureau shall submit an annual report to the Congress on all applications received, and actions taken (including the costs associated with such actions), under this section at the same time that the President is required to submit to the Congress the budget under section 1105 of title 31, United States Code.

(25 U.S.C. 2505)

SEC. 5207. DURATION OF ELIGIBILITY DETERMINATION.

(a) IN GENERAL.—If the Secretary determines that a tribally controlled school is eligible for assistance under this part, the eligibility determination shall remain in effect until the determination is revoked by the Secretary, and the requirements of subsection (b) or (c) of section 5206, if applicable, shall be considered to have been met with respect to such school until the eligibility determination is revoked by the Secretary.

(b) ANNUAL REPORTS.—Each recipient of a grant provided under this part shall submit to the Secretary and to the tribal governing body (within the meaning of section 1121(j) of the Education Amendments of 1978) of the tribally controlled school an annual report that shall be limited to—

(1) an annual financial statement reporting revenue and expenditures as defined by the cost accounting established by the grantee;

(2) a biannual financial audit conducted pursuant to the standards of the Single Audit Act of 1984;

(3) an annual submission to the Secretary of the number of students served and a brief description of programs offered under the grant; and

(4) a program evaluation conducted by an impartial entity, to be based on the standards established for purposes of subsection (c)(1)(A)(ii).

(c) REVOCATION OF ELIGIBILITY.—

(1)(A) The Secretary shall not revoke a determination that a school is eligible for assistance under this part if—

(i) the Indian tribe or tribal organization submits the reports required under subsection (b) with respect to the school, and

(ii) at least one of the following subclauses applies with respect to the school:

(I) The school is certified or accredited by a State or regional accrediting association as recognized by the Secretary of Education, or is a candidate in good standing for such accreditation under the rules of the State or regional accrediting association, showing that credits achieved by students within the education programs are, or will be, accepted at grade level by a State certified or regionally accredited institution.

(II) A determination made by the Secretary that there is a reasonable expectation that the accreditation described in subclause (I), or the candidacy in good standing for such accreditation, will be reached by the school within 3 years and that the program offered by the school is beneficial to the Indian students.

(III) The school is accredited by a tribal department of education if such accreditation is accepted by a generally recognized regional or State accreditation agency.

(IV) The school accepts the standards promulgated under section 1121 of the Education Amendments of 1978 and an evaluation of performance is conducted under this section in conformance with the regulations pertaining to Bureau operated schools by an impartial evaluator chosen by the grantee, but no grantee shall be required to comply with these standards to a higher degree than a comparable Bureau operated school.

(V) A positive evaluation of the school is conducted once every 3 years under standards adopted by the contractor under a contract for a school entered into under the Indian Self-Determination and Education Assistance Act (or revisions of such standards agreed to by the Secretary and the grantee) prior to the date of enactment of this Act, such evaluation to be conducted by an impartial evaluator agreed to by the Secretary and the grantee. If the Secretary and a grantee other than the tribal governing body fail to agree on such an evaluator, the tribal governing body shall choose the evaluator or perform the evaluation. If the Secretary and a grantee which is the tribal governing body fail to agree on such an evaluator, this subclause shall not apply.

(B) The choice of standards employed for purposes of subparagraph (A)(ii) shall be consistent with section 1121(e) of the Education Amendments of 1978.

(2) The Secretary shall not revoke a determination that a school is eligible for assistance under this part, or reassume control of a school that was a Bureau school prior to approval of an application submitted under section 5206(b)(1)(A), until the Secretary—

(A) provides notice to the tribally controlled school and the tribal governing body (within the meaning of section 1121(j) of the Education Amendments of 1978) of the tribally controlled school which states—

(i) the specific deficiencies that led to the revocation or resumption determination, and

(ii) the actions that are needed to remedy such deficiencies, and

(B) affords such authority an opportunity to effect any remedial actions.

The Secretary shall provide such technical assistance as is necessary to effect such remedial actions. Such notice and technical assistance shall be in addition to a hearing and appeal to be conducted pursuant to the regulations described in section 5206(f)(1)(C).

(d) APPLICABILITY OF SECTION PURSUANT TO ELECTION UNDER SECTION 5209(b).—With respect to a tribally controlled school which receives assistance under this part pursuant to an election made under section 5209(b)—

(1) subsection (b) of this section shall apply; and

(2) the Secretary may not revoke eligibility for assistance under this part except in conformance with subsection (c) of this section.

(25 U.S.C. 2506)

SEC. 5208. PAYMENT OF GRANTS; INVESTMENT OF FUNDS.

(a) PAYMENTS.—

(1) Except as otherwise provided in this subsection, the Secretary shall make payments to grantees under this part in two payments:

(A) one payment to be made no later than October 1 of each fiscal year in an amount equal to one-half the amount paid during the preceding fiscal year to the grantee or a contractor that has elected to have the provisions of this part apply, and

(B) the second payment consisting of the remainder to which the grantee or contractor is entitled for the fiscal year to be made by no later than January 1 of the fiscal year.

(2) For any school for which no payment was made from Bureau funds in the preceding fiscal year, full payment of the amount computed for each fiscal year shall be made by January 1 of the fiscal year.

(3) Paragraphs (1) and (2) of this subsection shall be subject to any restriction on amounts of payments under this part that may be imposed by a continuing resolution or other Act appropriating the funds involved.

(b) Investment of Funds.—

(1) Notwithstanding any other provision of law, any interest or investment income that accrues on any funds provided under this part after such funds are paid to the Indian tribe or tribal organization and before such funds are expended for the purpose for which such funds were provided under this part shall be the property of the Indian tribe or tribal organization and shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance, under any provision of Federal law.

(2) Funds provided under this part may be—

(A) invested by the Indian tribe or tribal organization only in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States, or

(B) deposited only into accounts that are insured by an agency or instrumentality of the United States.

(c) Recoveries.—For the purposes of underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived, funds received under this part shall not be taken into consideration.

(25 U.S.C. 2507)

SEC. 5209. APPLICATION WITH RESPECT TO INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.

(a) Certain Provisions To Apply To Grants.—All provisions of sections 5, 6, 7, 104, 109, and 110[1] of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c, et seq.) except those provisions pertaining to indirect costs and length of contract, shall apply to grants provided under this part.

(b) Election for Grant in Lieu of Contract.—

(1) Contractors for activities to which this part applies who have entered into a contract under the Indian Self-Determination and Education Assistance Act that is in effect upon the date of enactment of this Act may, by giving notice to the Secretary, elect to have the provisions of this part apply to such activity in lieu of such contract.

(2) Any election made under paragraph (1) shall take effect on the later of—

(A) October 1 of the fiscal year succeeding the fiscal year in which such election is made, or

(B) the date that is 60 days after the date of such election.

(3) In any case in which the 60-day period referred to in paragraph (2)(B) is less than 60 days before the beginning of the succeeding fiscal year, such election shall not take effect

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[1] Reference probably should be to 111. Section 206(b) of P.L. 100–472 (102 Stat. 2295) redesignated section 110 as 11 of the "Indian Self-Determination and Education Assistance Act". No conforming amendment was made to this subsection.

until the fiscal year after the fiscal year succeeding the election. For fiscal year 1989, the Secretary may waive this paragraph for elections received prior to September 30, 1988.

(c) NO DUPLICATION.—No funds may be provided under any contract entered into under the Indian Self-Determination and Education Assistance Act to pay any expenses incurred in providing any program or service if a grant has been made under this part to pay such expenses.

(d) TRANSFERS AND CARRYOVERS.—

(1) A tribe or tribal organization assuming the operation of a Bureau school with assistance under this part shall be entitled to the transfer or use of buildings, equipment, supplies, and materials to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(2) A tribe or tribal organization assuming the operation of a contract school with assistance under this part shall be entitled to the transfer or use of the buildings, equipment, supplies, and materials that were used in the operation of the contract school to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(3) Any tribe or tribal organization which assumes operation of a Bureau school with assistance under this part and any tribe or tribal organization which elects to operate a school with assistance under this part rather than to continue as a contract school shall be entitled to any funds which would carrover from the previous fiscal year as if such school were operated as a contract school.

(e) EXCEPTIONS, PROBLEMS, AND DISPUTES.—Any exception or problem cited in an audit conducted pursuant to section 5207(b)(2) of this Act, any dispute regarding the amount of a grant under section 5205 (and the amount of any funds referred to in that section), any payments to be made under section 5208 of this Act, and any dispute involving the amount of, or payment of, the administrative grant under section 1128A of the Education Amendments of 1978 (25 U.S.C. 2008a) shall be handled under the provisions governing such exceptions, problems, or disputes in the case of contracts under the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93–658;[1] 25 U.S.C. 450 et seq.).

(25 U.S.C. 2508)

SEC. 5210. ROLE OF THE DIRECTOR.

Applications for grants under this part, and all application modifications, shall be reviewed and approved by personnel under the direction and control of the Director of the Office of Indian Education Programs. Required reports shall be submitted to education personnel under the direction and control of the Director of such Office.

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[1] So in original. Probably should be "Public Law 93–638".

(25 U.S.C. 2509)

SEC. 5211. REGULATIONS.

The Secretary is authorized to issue regulations relating to the discharge of duties specifically assigned to the Secretary by this part. In all other matters relating to the details of planning, development, implementing, and evaluating grants under this part, the Secretary shall not issue regulations. Regulations issued pursuant to this part shall not have the standing of a Federal statute for the purposes of judicial review.

(25 U.S.C. 2510)

SEC. 5212. DEFINITIONS.

For purposes of this part—

(1) The term "eligible Indian student" has the meaning of such term in section 1128(f) of the Education Amendments of 1978 (25 U.S.C. 2008(f)).

(2) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation (as defined in or established pursuant to the Alaskan Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3)(A) The term "tribal organization" means—

(i) the recognized governing body of any Indian tribe, or

(ii) any legally established organization of Indians which—

(I) is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization, and

(II) includes the maximum participation of Indians in all phases of its activities.

(B) In any case in which a grant is provided under this part to an organization to perform services benefiting more than one Indian tribe, the approval of the governing bodies of Indian tribes representing 80 percent of those students attending the tribally controlled school shall be considered a sufficient tribal authorization for such grant.

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "tribally controlled school" means a school, operated by a tribe or a tribal organization, enrolling students in kindergarten through grade 12, including preschools, which is not a local educational agency and which is not directly administered by the Bureau of Indian Affairs.

(6) The term "a local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or

other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(7) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(25 U.S.C. 2511)

Indian Education Act of 1988

(Part C of Title V of Public Law 100–297)

PART C—DEPARTMENT OF EDUCATION

SEC. 5301. SHORT TITLE.

This part may be cited as the "Indian Education Act of 1988".

(25 U.S.C. 2601 note)

Subpart 1—Financial Assistance to Local Educational Agencies for the Education of Indian Children

SEC. 5311. DECLARATION OF POLICY.

In recognition of the special educational and culturally related academic needs of Indian students in the United States, Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies to develop and carry out elementary and secondary school programs specially designed to meet these special educational and culturally related academic needs, or both.

(25 U.S.C. 2601)

SEC. 5312. GRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) In General.—The Secretary shall, in order to effectuate the policy set forth in section 5311, carry out a program of making grants to local educational agencies which are entitled to payments under this subpart and which have submitted, and have had approved, applications therefor, in accordance with the provisions of this subpart.

(b) Amount of Grants.—

(1) For any fiscal year for which appropriations are authorized under section 5316 of this Act, the Secretary shall determine the number of Indian children who were enrolled in the schools of each local educational agency that applies for a grant, and for whom such agency provided free public education, during such fiscal year.

(2)(A) From the sums appropriated under section 5316(a) for any fiscal year, the Secretary shall allocate to each local educational agency which has an application approved under this subpart an amount which bears the same ratio to such sums as the product of—

(i) the number of Indian children determined under paragraph (1), multiplied by

(ii) the average per pupil expenditure per local educational agency, as determined under subparagraph (C), bears to the sum of such products for all such local educational agencies.

(B) A local educational agency shall not be entitled to receive a grant under this subpart for any fiscal year unless the number of Indian children determined under paragraph (1), with respect to such agency, is at least 10 or constitutes at least 50 percent of its total enrollment. The requirements of this subparagraph shall not apply to any local educational agencies serving Indian children in Alaska, California, and Oklahoma or located on, or in proximity to, an Indian reservation.

(C) For the purposes of this subsection, the average per pupil expenditure for a local educational agency is equal to the amount determined by dividing—

(i) the sum of—

(I) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made, of all of the local educational agencies in the State in which such agency is located, plus

(II) any direct current expenditures by such State for the operation of such agencies (without regard to the sources of funds from which either of such expenditures are made), by

(ii) the aggregate number of children who were in average daily attendance for whom such agencies provided free public education during such preceding fiscal year.

(3)(A) The first fiscal year for which schools operated by the Bureau of Indian Affairs of the Department of the Interior shall be treated as local educational agencies for the purposes of this subpart (other than sections 5314(b)(2)(B)(ii) and 5315(c)(2)) is the first fiscal year beginning after the date of enactment of this Act for which the amount of funds appropriated for allocation under this subsection equals or exceeds the amount of funds that, if such schools are not treated as local educational agencies, is necessary to allocate under paragraph (2) (determined without regard to subparagraph (B)) to each local educational agency which has an application approved under this subpart for such fiscal year an amount of funds for each eligible Indian child equal to the sum of—

(i) the average amount of funds per eligible Indian child that was received by such local educational agency for fiscal year 1988 under section 303(a)(2) of the Indian Elementary and Secondary School Assistance Act[1] (20 U.S.C. 241bb(a)(2)), plus

(ii) 2 percent of the amount described in clause (i).

(B)(i) Notwithstanding any other provision of this subpart, for each fiscal year to which this clause applies—

(I) paragraph (2) shall first be applied to allocate the portion of the funds appropriated for such fiscal year for allocation under this subsection that does not exceed the amount determined to be necessary under subparagraph (A) among only those local educational agencies that received funds under section 303(a)(2) of the Indian Elementary and Secondary School Assistance Act[1] (20 U.S.C. 241bb(a)(2)) for fiscal year 1988, and

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[1] Section 5352(1) of P.L. 100–297 (this Act) repealed the Act entitled "Indian Elementary and Secondary School Assistance Act".

(II) paragraph (2) shall then be applied to allocate the remaining portion (if any) of the funds appropriated for such fiscal year for allocation under this subsection among only those local educational agencies that are schools operated by the Bureau of Indian Affairs.

(ii) Clause (i) applies to the first fiscal year described in subparagraph (A), and each succeeding fiscal year, until the amount of funds appropriated for allocation under this subsection for any fiscal year beginning after the date of enactment of this Act equals or exceeds the amount of funds that, if all schools operated by the Bureau of Indian Affairs are treated as local educational agencies, is necessary to allocate under paragraph (2) (determined without regard to clause (i)) to each local educational agency which has an application approved under this subpart for such fiscal year an amount of funds for each eligible Indian child equal to the sum of—

(I) the average amount of funds per eligible Indian child that was received by such local educational agency for fiscal year 1988 under the Indian Elementary and Secondary School Assistance Act[1], plus

(II) 2 percent of the amount described in subclause (I).

(c) GRANTS TO SCHOOLS THAT ARE NOT, OR HAVE NOT BEEN, LOCAL EDUCATIONAL AGENCIES.—

(1) In addition to the sums appropriated for any fiscal year for grants to local educational agencies under this subpart, there is hereby authorized to be appropriated for any fiscal year an amount not in excess of 10 percent of the amount appropriated for payments on the basis of entitlements computed under subsection (b) for that fiscal year, for the purpose of enabling the Secretary to provide financial assistance, on a competitive basis, to schools—

(A) which are located on or near reservations; and

(B) which—

(i) are not local educational agencies, or

(ii) have not been local educational agencies for more than 3 years.

(2) The requirements of clause (A) of paragraph (1) shall not apply to any school serving Indian children in California, Oklahoma, or Alaska.

(d) GRANTS FOR DEMONSTRATION PROJECTS.—In addition to the sums appropriated for any fiscal year for grants to local educational agencies under this subpart, there is hereby authorized to be appropriated for any fiscal year an amount not in excess of 10 percent of the amount appropriated for payments of entitlements computed under subsection (b) for that fiscal year, for the purpose of enabling the Secretary to make grants on a competitive basis to local educational agencies to support demonstration projects and programs which are designed to plan for and improve educational opportunities for Indian children, except that the Secretary shall reserve a portion not to exceed 25 percent of such funds to make grants for demonstration projects examining the special educational and culturally related academic needs that arise in school districts with high concentrations of Indian children.

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[1] See footnote 1 on previous page.

(25 U.S.C. 2602)

SEC. 5313. USES OF FEDERAL FUNDS.

Grants under this subpart may be used, in accordance with applications approved under section 5314, for—

(1) planning and development of programs specifically designed to meet the special educational or culturally related academic needs, or both, of Indian children, including pilot projects designed to test the effectiveness of plans so developed;

(2) the establishment, maintenance, and operation of such programs, including, in accordance with regulations of the Secretary, minor remodeling of classroom or other space used for such programs and acquisition of necessary equipment; and

(3) the training of counselors at schools eligible to receive funds under this subpart in counseling techniques relevant to the treatment of alcohol and substance abuse.

(25 U.S.C. 2603)

SEC. 5314. APPLICATIONS FOR GRANTS; CONDITIONS FOR APPROVAL.

(a) IN GENERAL.—A grant[1] under this subpart, except as provided in section 5312(c), may be made only to a local educational agency or agencies, and only upon application to the Secretary at such time or times, in such manner, and containing or accompanied by such information as the Secretary deems necessary. Such application shall—

(1) provide that the activities and services for which assistance under this subpart is sought will be administered by or under the supervision of the applicant;

(2) set forth a program for carrying out the purposes of section 5313, and provide for such methods of administration as are necessary for the proper and efficient operation of the program;

(3) in the case of an application for payments for planning, provide that—

(A) the planning was or will be directly related to programs or projects to be carried out under this subpart and has resulted, or is reasonably likely to result; in a program or project which will be carried out under this subpart, and

(B) the planning funds are needed because of the innovative nature of the program or project or because the local educational agency lacks the resources necessary to plan adequately for programs and projects to be carried out under this subpart;

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[1] P.L. 100–927, sec. 16(1)(A), 102 Stat. 1610 amended section 5314(a) by striking out "provided". The word "provided" appears twice. In order to reflect the probable intent of Congress, the amendment was executed the first place "provided" appeared.

(4) provide that effective procedures, including provisions for appropriate objective measurement of educational achievement, will be adopted for evaluating at least annually the effectiveness of the programs and projects in meeting the special educational needs of Indian students;

(5) set forth policies and procedures which assure that Federal funds made available under this subpart for any fiscal year will be so used as to supplement and, to the extent practical,[1] increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the education of Indian children and in no case supplant such funds;

(6) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the applicant under this subpart; and

(7) provide for making an annual report and such other reports, in such form and containing such information, as the Secretary may reasonably require to carry out his functions under this subpart and to determine the extent to which funds provided under this subpart have been effective in improving the educational opportunities of Indian students in the area served, and for the keeping of such records, and the affording of such access thereto, as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) APPROVAL OF APPLICATIONS.—An application by a local educational agency or agencies for a grant under this subpart may be approved only if it is consistent with the applicable provisions of this subpart and—

(1) meets the requirements set forth in subsection (a);

(2) provides that the program or project for which application is made—

(A) will utilize the best available talents and resources (including persons from the Indian community) and will substantially increase the educational opportunities of Indian children in the area to be served by the applicant; and

(B) has been developed—

(i) in open consultation with parents of Indian children, teachers, and, where applicable, secondary school students, including public hearings at which such persons have had a full opportunity to understand the program for which assistance is being sought and to offer recommendations thereon, and

(ii) with the participation and written approval of a committee—

(I) which is composed of, and selected by, parents of children participating in the program for which assistance is sought, teachers, and, where applicable, secondary school students, and

(II) of which at least half the members shall be parents described in subclause (I);

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[1] So in original. Probably should be "practicable,".

(3) sets forth such policies and procedures, including policies and procedures relating to the hiring of personnel, as will ensure that the program for which assistance is sought will be operated and evaluated in consultation with, and with the involvement of, parents of the children and representatives of the area to be served, including the committee established for the purposes of paragraph (2)(B)(ii); and

(4) provides that the parent committee formed pursuant to paragraph (2)(B)(ii) will adopt and abide by reasonable bylaws for the conduct of the program for which assistance is sought.

(c) Amendments of Applications.—Amendments of applications submitted under this subpart shall, except as the Secretary may otherwise provide by regulation, be subject to approval in the same manner as original applications.

(d) Eligibility Forms.—

(1) The Secretary shall require that each application for a grant under this subpart for each fiscal year be supported by a form, maintained in the files of the applicant, for each eligible Indian child for whom the local educational agency is providing free public education that sets forth information establishing the status of the child as an eligible Indian child.

(2) The Secretary shall request on the form required under paragraph (1) at least the following information:

(A) either—

(i) the name of the tribe, band, or other organized group of Indians with which the child claims membership, along with the enrollment number establishing membership (if readily available), and the name and address of the organization which has updated and accurate membership data for such tribe, band, or other organized group of Indians, or

(ii) if the child is not a member of a tribe, band, or other organized group of Indians, the name, the enrollment number (if readily available) and the organization (and address thereof) responsible for maintaining updated and accurate membership rolls of any of the child's parents or grandparents, from whom the child claims eligibility;

(B) whether the tribe, band, or other organized group of Indians with which the child, his parents, or grandparents claim membership is federally recognized;

(C) the name and address of the parent or legal guardian;

(D) the signature of the parent or legal guardian verifying the accuracy of the information supplied; and

(E) any other information which the Secretary deems necessary to provide an accurate program profile.

(3) Nothing in the requirements of paragraph (2) may be construed as affecting the definition set forth in section 5351(4). In order for a child to be counted in computing the local educational agency's grant award, the eligibility form for the child must contain at least—

(A) the child's name;

(B) the name of the tribe, band, or other organized group of Indians; and

(C) the parent's dated signature.

The failure of an applicant to furnish any other information listed in paragraph (2) with respect to any child shall have no bearing on the determination of whether the child is an eligible Indian child.

(4) The forms and the standards of proof (including the standard of good faith compliance) that were in use during the 1985–1986 academic year to establish a child's eligibility for entitlement under the Indian Elementary and Secondary School Assistance Act[1] shall be the only forms and standards of proof used to establish such eligibility and to meet the requirements of paragraph (1) after the date of enactment of this Act.

(5) For purposes of determining whether a child is an eligible Indian child, the membership of the child, or any parent or grandparent of the child, in a tribe, band, or other organized group of Indians may be established by proof other than an enrollment number, even if enrollment numbers for members of such tribe, band, or groups are available. Nothing in paragraph (2) may be construed as requiring the furnishing of enrollment numbers.

(e) AUDITING; PENALTIES FOR FALSE INFORMATION.—

(1)(A) The Secretary shall establish a method of auditing, on an annual basis, a sample of not less than one-fourth of the total number of local educational agencies receiving funds under this subpart and shall submit to the Congress an annual report on the findings of the audits.

(B) For purposes of any audit conducted by the Federal Government with respect to funds provided under this subpart, all procedures, practices, and policies that are established by—

(i) the Office of Indian Education of the Department of Education, or

(ii) a grantee under this subpart who, in establishing such procedures, practices, and policies, was acting under the direction of any employee of such Office that is authorized by the Director of such Office to provide such direction,

shall, with respect to the period beginning on the date of the establishment of such procedures, practices, and policies, and ending on the date (if any) on which the Director of such Office revokes authorization for such procedures, practices, and policies, be considered appropriate and acceptable procedures, practices, and policies which are in conformity with Federal law.

(C) No local educational agency may be held liable to the United States, or be otherwise penalized, by reason of the findings of any audit that relate to the date of completion, or the date of submission, of any forms used to establish, before April

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[1] Section 5352(1) of P.L. 100–297 (this Act) repealed the Act entitled "Indian Elementary and Secondary School Assistance Act".

28, 1988, a child's eligibility for entitlement under the Indian Elementary and Secondary School Assistance Act[1].

(2) Any local educational agency that provides false information in the application for a grant under this subpart shall be ineligible to apply for any other grants under this subpart and shall be liable to the United States for any funds provided under this subpart that have not been expended.

(3) Any student who provides false information on the form required under subsection (d)(1) may not be taken into account in determining the amount of any grant under this subpart.

(25 U.S.C. 2604)

SEC. 5315. PAYMENTS.

(a) IN GENERAL.—The Secretary shall, subject to the provisions of section 5316, from time-to-time pay to each local educational agency which has had an application approved under section 5314, an amount equal to the amount estimated to be expended by such agency in carrying out activities under such application.

(b) DENIAL OF PAYMENTS IF PAYMENTS TAKEN INTO ACCOUNT BY STATE.—No payments shall be made under this subpart for any fiscal year to any local educational agency in a State which has taken into consideration payments under this subpart in determining the eligibility of such local educational agency in that State for State aid, or the amount of that aid, with respect to the free public education of children during that year or the preceding fiscal year.

(c) REDUCTION FOR FAILURE TO MAINTAIN FISCAL EFFORT.—

(1) The Secretary shall not pay to any local educational agency its full allotment under section 5312 for any fiscal year unless the State educational agency determines that the combined fiscal effort of that local agency and the State with respect to the provision of free public education by that local agency for the preceding fiscal year, computed on either a per student or aggregate expenditure basis, was at least 90 percent of such combined fiscal effort, computed on the same basis, for the second preceding fiscal year.

(2) If the Secretary determines for any fiscal year that a local educational agency failed to maintain its expenditures at the 90 percent level required by paragraph (1), the Secretary shall—

(A) reduce the allocation of funds to that agency in the exact proportion of that agency's failure to maintain its expenditures at that level, and

(B) not use the reduced amount of the agency's expenditures for the preceding year to determine compliance with paragraph (1) in any succeeding fiscal year, but shall use the amount of expenditures that would have been required to comply with paragraph (1).

(3) The Secretary may waive the requirements of this subsection for one fiscal year only if the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the agency's financial resources. The

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[1] See footnote on previous page.

Secretary shall not use the reduced amount of agency's expenditures for the fiscal year preceding the fiscal year for which a waiver is granted to determine compliance with paragraph (1) in any succeeding fiscal year, but shall use the amount of expenditures that would have been required to comply with paragraph (1) in the absence of a waiver.

(25 U.S.C. 2605)

SEC. 5316. AUTHORIZATION OF APPROPRIATIONS; ADJUSTMENTS.

(a) IN GENERAL.—For the purpose of making payments under this subpart, there are authorized to be appropriated—

(1) for fiscal year 1988, $70,000,000, and

(2) for each of the fiscal years 1989, 1990, 1991, 1992, and 1993, such sums as may be necessary.

(b) REALLOCATIONS.—The Secretary may reallocate, in such manner as will best assist in advancing the purposes of this subpart, any amount which the Secretary determines, based upon estimates made by local educational agencies, will not be needed by any such agency to carry out its approved project.

(25 U.S.C. 2606)

Subpart 2—Special Programs and Projects to Improve Educational Opportunities for Indian Children

SEC. 5321. IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN.

(a) IN GENERAL.—The Secretary shall carry out a program of making grants for the improvement of educational opportunities for Indian children—

(1) to support planning, pilot, and demonstration projects, in accordance with subsection (b), which are designed to test and demonstrate the effectiveness of programs for improving educational opportunities for Indian children;

(2) to assist in the establishment and operation of programs, in accordance with subsection (c), which are designed to stimulate—

(A) the provision of educational services not available to Indian children in sufficient quantity or quality, and

(B) the development and establishment of exemplary educational programs to serve as models for regular school programs in which Indian children are educated;

(3) to assist in the establishment and operation of preservice and inservice training programs, in accordance with subsection (d), for persons serving Indian children as educational personnel; and

(4) to encourage the dissemination of information and materials relating to, and the evaluation of the effectiveness of, education programs which may offer educational opportunities to Indian children.

(b) DEMONSTRATION PROJECTS.—The Secretary is authorized to make grants to State and local educational agencies, federally supported elementary and secondary schools for Indian children and to Indian tribes, Indian organizations, and Indian institutions to support planning, pilot, and demonstration projects which are designed to plan for, and test and demonstrate the effectiveness of, programs for improving educational opportunities for Indian children, including—

(1) innovative programs related to the educational needs of educationally deprived children;

(2) bilingual and bicultural education programs and projects;

(3) special health and nutrition services, and other related activities, which meet the special health, social, and psychological problems of Indian children; and

(4) coordination of the operation of other federally assisted programs which may be used to assist in meeting the needs of such children.

(c) SERVICES AND PROGRAMS TO IMPROVE EDUCATIONAL OPPORTUNITIES.—

(1) The Secretary is authorized to make grants to State and local educational agencies and to tribal and other Indian community organizations to assist them in developing and establishing educational services and programs specifically designed to improve educational opportunities for Indian children. Such grants may be used—

(A) to provide educational services not available to such children in sufficient quantity or quality, including—

(i) remedial and compensatory instruction, school health, physical education, psychological, and other services designed to assist and encourage Indian children to enter, remain in, or reenter elementary or secondary school;

(ii) comprehensive academic and vocational instruction;

(iii) instructional materials (such as library books, textbooks, and other printed, published, or audiovisual materials) and equipment;

(iv) comprehensive guidance, counseling, and testing services;

(v) special education programs for handicapped and gifted and talented Indian children;

(vi) early childhood programs, including kindergarten;

(vii) bilingual and bicultural education programs; and

(viii) other services which meet the purposes of this subsection; and

(B) to establish and operate exemplary and innovative educational programs and centers, involving new educational approaches, methods, and techniques designed to enrich programs of elementary and secondary education for Indian children.

(2) In addition to the grants provided under paragraph (1), the Secretary is authorized to provide grants to consortia of Indian tribes or tribal organizations, local educational agencies, and institutions of higher education for the purpose of developing, improving, and implementing a program of—

(A) encouraging Indian students to acquire a higher education, and

(B) reducing the incidence of dropouts among elementary and secondary school students.

(d) TRAINING.—

(1) The Secretary is authorized to make grants to institutions of higher education and to State and local educational agencies, in combination with institutions of higher education, for carrying out programs and projects—

(A) to prepare persons to serve Indian students as teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(B) to improve the qualifications of such persons who are serving Indian students in such capacities.

(2) Grants made under this subsection may be used for the establishment of fellowship programs leading to an advanced degree, for institutes and, as part of a continuing program, for seminars, symposia, workshops, and conferences.

(3) In programs funded by grants authorized under this subsection, preference shall be given to the training of Indians.

(4) In making grants under this subsection, the Secretary shall consider prior performance and may not limit eligibility on the basis of the number of previous grants or the length of time for which the applicant has received grants.

(e) GRANTS FOR EVALUATION AND TECHNICAL ASSISTANCE.—

(1) The Secretary is authorized to make grants to, and to enter into contracts with, public agencies, State educational agencies in States in which more than 5,000 Indian children are enrolled in public elementary and secondary schools, Indian tribes, Indian institutions, and Indian organizations, and to make contracts with private institutions and organizations, to establish, on a regional basis, information centers to—

(A) evaluate programs assisted under this Act[1] and under other Indian education programs in order to determine their effectiveness in meeting the special educational and culturally related academic needs of Indian children and adults and to conduct research to determine those needs;

(B) provide technical assistance, upon request, to local educational agencies and Indian tribes, Indian organizations, Indian institutions, and parent committees created pursuant to section 5314(b)(2)(B)(ii) in evaluating and carrying out programs assisted under this Act[1], through the provision of materials and personnel resources; and

(C) disseminate information, upon request, to the parties described in subparagraph (B) concerning all Federal education programs which affect the education of Indian children and adults, including information on successful models and programs designed to meet the special educational needs of Indian children.

(2) Grants or contracts made under this subsection may be made for a term not to exceed 3 years and may be renewed for additional 3-year terms if provision is made to ensure annual review of the projects.

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[1] So in original. Probably should be "this part".

(3) From funds appropriated under the authority of subsection (g)(1), the Secretary is authorized to make grants to, and to enter into contracts with, Indian tribes, Indian institutions, and Indian organizations, and public agencies and institutions for—

(A) the national dissemination of information concerning education programs, services, and resources available to Indian children, including evaluations thereof; and

(B) the evaluation of the effectiveness of federally assisted programs in which Indian children may participate in achieving the purposes of such programs with respect to such children.

(4) The sum of the grants made under this subsection to State educational agencies for any fiscal year shall not exceed 15 percent of the total amount of funds appropriated for the provision of grants under this subsection for such fiscal year.

(f) APPLICATIONS FOR GRANTS.—

(1) Applications for a grant under this section shall be submitted at such time, in such manner, and shall contain such information, and shall be consistent with such criteria, as may be required under regulations prescribed by the Secretary. Such applications shall—

(A) set forth a statement describing the activities for which assistance is sought;

(B) in the case of an application for a grant under subsection (c)—

(i) subject to such criteria as the Secretary shall prescribe, provide for—

(I) the use of funds available under this section, and

(II) the coordination of other resources available to the applicant,

in order to ensure that, within the scope of the purpose of the project, there will be a comprehensive program to achieve the purposes of this section, and

(ii) provide for the training of personnel participating in the project; and

(C) provide for an evaluation of the effectiveness of the project in achieving its purpose and the purposes of this section.

(2)(A) The Secretary may approve an application for a grant under subsection (b), (c), or (d) only if the Secretary is satisfied that such application, and any document submitted with respect thereto—

(i) demonstrate that—

(I) there has been adequate participation by the parents of the children to be served and tribal communities in the planning and development of the project, and

(II) there will be such participation in the operation and evaluation of the project, and

(ii) provide for the participation, on an equitable basis, of eligible Indian children—

(I) who reside in the area to be served,

(II) who are enrolled in private nonprofit elementary and secondary schools, and

(III) whose needs are of the type which the program is intended to meet,

to the extent consistent with the number of such children.

(B) In approving applications under this section, the Secretary shall give priority to applications from Indian educational agencies, organizations, and institutions.

(3) The Secretary may approve an application for a grant under subsection (e) only if the Secretary is satisfied that the funds made available under that subsection will be used to supplement the level of funds from State, local, and other Federal sources that would, in the absence of Federal funds provided under that subsection, be made available by the State or local educational agency for the activities described in that subsection, and in no case will be used to supplant those funds.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) For the purpose of making grants under the provisions of this section, other than subsection (e)(1), there are authorized to be appropriated $35,000,000 for each fiscal year ending prior to October 1, 1993.

(2) For the purpose of making grants under subsection (e)(1), there are authorized to be appropriated $8,000,000 for each of the fiscal years ending prior to October 1, 1993.

(25 U.S.C. 2621)

SEC. 5322. SPECIAL EDUCATIONAL TRAINING PROGRAMS FOR THE TEACHERS OF INDIAN CHILDREN.

(a) IN GENERAL.—

(1) The Secretary is authorized to make grants to, and enter into contracts with, institutions of higher education, Indian organizations, and Indian tribes for the purpose of—

(A) preparing individuals for teaching or administering special programs and projects designed to meet the special educational needs of Indian people, and

(B) providing in-service training for persons teaching in such programs.

(2) Priority shall be given in the awarding of grants, and in the entering into of contracts, under subsection (a) to Indian institutions and organizations.

(b) FELLOWSHIPS AND TRAINEESHIPS.—

(1) In carrying out the provisions of this section, the Secretary is authorized to award fellowships and traineeships to individuals and to make grants to, and to enter into contracts with, institutions of higher education, Indian organizations, and Indian tribes for the costs of education allowances.

(2) In awarding fellowships and traineeships under this subsection, the Secretary shall give preference to Indians.

(3) In the case of traineeships and fellowships, the Secretary is authorized to grant stipends to, and allowances for dependents of, persons receiving traineeships and fellowships.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year ending prior to October 1, 1993, such sums as may be necessary to carry out the provisions of this section.

(25 U.S.C. 2622)

SEC. 5323. FELLOWSHIPS FOR INDIAN STUDENTS.

(a) In General.—During each fiscal year ending prior to October 1, 1993, the Secretary is authorized to award fellowships to be used for study in graduate and professional programs at institutions of higher education. Such fellowships shall be awarded to Indian students in order to enable them to pursue a course of study of not more than 4 academic years leading toward a postbaccalaureate degree in medicine, clinical psychology, psychology, law, education, and related fields or leading to an undergraduate or graduate degree in engineering, business administration, natural resources, and related fields.

(b) Stipends.—The Secretary shall pay to persons awarded fellowships under subsection (a) such stipends (including such allowances for subsistence of such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported programs.

(c) Payments to Institutions In Lieu of Tuition.—The Secretary shall pay to the institution of higher education at which the holder of a fellowship awarded under subsection (a) is pursuing a course of study, in lieu of tuition charged such holder, such amounts as the Secretary may determine to be necessary to cover the cost of education provided the holder of such a fellowship.

(d) Special Rules.—

(1) The Secretary may, if a fellowship awarded under subsection (a) is vacated prior to the end of the period for which it was awarded, award an additional fellowship for the remainder of such period.

(2) By no later than the date that is 45 days before the commencement of an academic term, the Secretary shall provide to each individual who is awarded a fellowship under subsection (a) for such academic term written notice of the amount of such fellowship and of any stipends or other payments that will be made under this section to, or for the benefit of, such individual for such academic term.

(3) Not more than 10 percent of the fellowships awarded under subsection (a) shall be awarded, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.

(e) Authorization of Appropriations.—There are authorized to be appropriated for fiscal year 1989, and for each of the 4 succeeding fiscal years, such sums as may be necessary to carry out the provisions of this section.

(25 U.S.C. 2623)

SEC. 5324. GIFTED AND TALENTED.

(a) Establishment of Centers.—The Secretary shall establish 2 centers for gifted and talented Indian students at tribally controlled community colleges.

(b) Demonstration Projects.—

(1) The Secretary shall award separate grants to, or enter into contracts with—

(A) 2 tribally controlled community colleges that—

(i) are eligible for funding under the Tribally Controlled Community College Assistance Act of 1978, and

(ii) are fully accredited, or

(B) if acceptable applications are not submitted to the Secretary by 2 of such colleges, the American Indian Higher Education Consortium,

for the establishment of centers under subsection (a) and for demonstration projects designed to address the special needs of Indian students in elementary and secondary schools who are gifted and talented and to provide those support services to their families that are needed to enable the students to benefit from the project.

(2) Any person to whom a grant is made, or with whom a contract is entered into, under paragraph (1) may enter into a contract with any other persons, including the Children's Television Workshop, for the purpose of carrying out the demonstration projects for which such grant was awarded or for which the contract was entered into by the Secretary.

(3) Demonstration projects funded under this section may include—

(A) the identification of the special needs of gifted and talented students, particularly at the elementary school level, with attention to the emotional and psychosocial needs of these students and to the provision of those support services to their families that are needed to enable these students to benefit from the project;

(B) the conduct of educational, psychosocial, and developmental activities which hold reasonable promise of resulting in substantial progress toward meeting the educational needs of such gifted and talented children, including, but not limited to, demonstrating and exploring the use of Indian languages and exposure to Indian cultural traditions;

(C) the provision of technical assistance and the coordination of activities at schools which receive grants under subsection (c) with respect to the activities funded by such grants, the evaluation of programs at such schools funded by such grants, or the dissemination of such evaluations;

(D) the use of public television in meeting the special educational needs of such gifted and talented children;

(E) leadership programs designed to replicate programs for such children throughout the United States, including the dissemination of information derived from the demonstration projects conducted under this section; and

(F) appropriate research, evaluation, and related activities pertaining to the needs of such children and to the provision of those support services to their families that are needed to enable such children to benefit from the project.

(c) ADDITIONAL GRANTS.—

(1) The Secretary, in consultation with the Secretary of the Interior, shall provide 5 grants to schools that are Bureau funded schools for program research and development regarding, and the development and dissemination of curriculum and teacher training material regarding—

(A) gifted and talented students,

(B) college preparatory studies (including programs for Indian students interested in teaching careers),

(C) students with special culturally related academic needs, including social, lingual, and cultural needs, and

(D) math and science education.

(2) Applications for the grants provided under paragraph (1) shall be submitted to the Secretary in such form and at such time as the Secretary may prescribe. Applications for such grants by Bureau schools, and the administration of any of such grants made to a Bureau school, shall be undertaken jointly by the supervisor of the Bureau school and the local school board.

(3) Grants may be provided under paragraph (1) for one or more activities described in paragraph (1).

(4) In providing grants under paragraph (1), the Secretary shall—

(A) achieve a mixture of programs described in paragraph (1) which ensures that students at all grade levels and in all geographic areas of the United States are able to participate in some programs funded by grants provided under this subsection, and

(B) ensure that a definition of the term "gifted and talented student" for purposes of this section and section 1128(c)(3)(A)(i) of the Education Amendments of 1978 is developed as soon as possible.

(5) Subject to the availability of appropriated funds, grants provided under paragraph (1) shall be made for a 3-year period and may be renewed by the Secretary for additional 3-year periods if performance by the grantee is satisfactory to the Secretary.

(6)(A) The dissemination of any materials developed from activities funded by grants provided under paragraph (1) shall be carried out in cooperation with institutions receiving funds under subsection (b).

(B) The Secretary shall report to the Secretary of the Interior and to the Congress any results from activities described in paragraph (4)(B).

(7)(A) The costs of evaluating any activities funded by grants made under paragraph (1) shall be divided between the school conducting such activities and the demonstration project recipients under subsection (b).

(B) If no funds are provided under subsection (b) for—

(i) the evaluation of activities funded by grants made under paragraph (1),

(ii) technical assistance and coordination with respect to such activities, or

(iii) dissemination of such evaluations, the Secretary shall, by grant or through contract, provide for such evaluations, technical assistance, coordination, and dissemination.

(d) INFORMATION NETWORK.—The Secretary shall encourage persons to whom a grant is made, or with whom a contract is entered into, under this section to work cooperatively as a national network so that the information developed by such persons is readily available to the entire educational community.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $3,000,000 for each of the fiscal years 1988, 1989, 1990, 1991, 1992, and 1993 for the purpose of carrying out the provisions of this section. Such sums shall remain available until expended.

(25 U.S.C. 2624)

Subpart 3—Special Programs Relating to Adult Education for Indians

SEC. 5330. IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR ADULT INDIANS.

(a) IN GENERAL.—The Secretary shall carry out a program of awarding grants to State and local educational agencies and to Indian tribes, institutions, and organizations—

(1) to support planning, pilot, and demonstration projects which are designed to test and demonstrate the effectiveness of programs for improving employment and educational opportunities for adult Indians;

(2) to assist in the establishment and operation of programs which are designed to stimulate—

(A) the provision of basic literacy opportunities to all nonliterate Indian adults, and

(B) the provision of opportunities to all Indian adults to qualify for a high school equivalency certificate in the shortest period of time feasible;

(3) to support a major research and development program to develop more innovative and effective techniques for achieving the literacy and high school equivalency goals;

(4) to provide for basic surveys and evaluations to define accurately the extent of the problems of illiteracy and lack of high school completion among Indians; and

(5) to encourage the dissemination of information and materials relating to, and the evaluation of the effectiveness of, education programs which may offer educational opportunities to Indian adults.

(b) EDUCATIONAL SERVICES.—The Secretary is authorized to make grants to Indian tribes, Indian institutions, and Indian organizations to develop and establish educational services and programs specifically designed to improve educational opportunities for Indian adults.

(c) INFORMATION AND EVALUATION.—The Secretary is also authorized to make grants to, and to enter into contracts with, public agencies and institutions and Indian tribes, institutions, and organizations for—

(1) the dissemination of information concerning educational programs, services, and resources available to Indian adults, including evaluations thereof; and

(2) the evaluation of federally assisted programs in which Indian adults may participate to determine the effectiveness of such programs in achieving the purposes of such programs with respect to such adults.

(d) APPLICATIONS.—

(1) Applications for a grant under this section shall be submitted at such time, in such manner, contain such information, and be consistent with such criteria, as may be required under regulations prescribed by the Secretary. Such applications shall—

(A) set forth a statement describing the activities for which assistance is sought; and

(B) provide for an evaluation of the effectiveness of the project in achieving its purposes and those of this section.

(2) The Secretary shall not approve an application for a grant under subsection (a) unless he is satisfied that such application, and any documents submitted with respect thereto, indicate that—

(A) there has been adequate participation by the individuals to be served and tribal communities in the planning and development of the project, and

(B) there will be such a participation in the operation and evaluation of the project.

(3) In approving applications under subsection (a), the Secretary shall give priority to applications from Indian educational agencies, organizations, and institutions.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1989, and for each of the 4 succeeding fiscal years, such sums as may be necessary to carry out the provisions of this section.

(25 U.S.C. 2631)

Subpart 4—Program Administration

SEC. 5341. OFFICE OF INDIAN EDUCATION.

(a) IN GENERAL.—There is established, in the Department of Education, an Office of Indian Education.

(b) DIRECTOR.—

(1) The Office of Indian Education shall be under the direction of the Director of the Office of Indian Education, who shall be appointed by the Secretary from a list of nominees submitted to the Secretary by the National Advisory Council on Indian Education.

(2)[1] The Director of the Office of Indian Education shall—

(A) be responsible for administering the provisions of this part,

(B) be responsible for the development of all policies and procedures relative to the implementation of this part,

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[1] So in original. There are two paragraphs designated (2).

(C) be involved in, and primarily responsible for, development of all policies affecting Indians under programs within the Office of Elementary and Secondary Education of the Department of Education, and

(D) coordinate the development of policy and practices for all programs in the Department of Education relating to Indians and Alaska Natives.

(2)[1] The Director of the Office of Indian Education shall report directly to the Assistant Secretary of Education for Elementary and Secondary Education.

(3) The Director of the Office of Indian Education shall be compensated at the rate prescribed for, and shall be placed in, grade 18 of the General Schedule set forth in section 5332 of title 5, United States Code, and shall perform such duties as are delegated or assigned to the Director by the Secretary. The position created by this subsection shall be in addition to the number of positions placed in grade 18 of such General Schedule under section 5108 of title 5, United States Code.

(c) INDIAN PREFERENCE.—

(1)(A) All professional staff within the Office of Indian Education shall have experience with Indian education programs. The Secretary shall give a preference to Indians in all personnel actions within the Office of Indian Education. Such preference shall be implemented in the same fashion as the preference given to any veteran referred to in subparagraph (A), (B), or (C) of section 2108(3) of title 5, United States Code.

(B) The provisions of this paragraph shall apply to all personnel actions taken after the date of enactment of this Act.

(2) The Secretary shall provide a one-time preference for qualified individuals who—

(A) are not Indians,

(B) are serving within the Office of Indian Education on the date of enactment of this Act, and

(C) desire to take another position in the Department of Education which is not within the Office of Indian Education and for which there is a vacancy.

(25 U.S.C. 2641)

SEC. 5342. NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION.

(a) IN GENERAL.—

(1) There is hereby established the National Advisory Council on Indian Education (hereafter in this subpart referred to as the "National Council"), which—

(A) shall consist of 15 members who are Indians, appointed by the President from lists of nominees furnished, from time to time, by Indian tribes and organizations, and

(B) shall represent diverse geographic areas of the country.

(2) Subject to section 448(b) of the General Education Provisions Act, the National Council shall continue to exist until October 1, 1993.

(b) FUNCTIONS.—The National Council shall—

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[1] See footnote on previous page.

(1) advise the Secretary with respect to—

(A) the administration (including the development of regulations and of administrative practices and policies) of any program—

(i) in which Indian children or adults participate, or

(ii) from which they can benefit, including this part, and

(B) adequate funding of such programs;

(2) review applications for assistance under this part and make recommendations to the Secretary with respect to their approval;

(3) evaluate programs and projects carried out under any program of the Department of Education in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

(4) provide technical assistance to local educational agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;

(5) assist the Secretary in developing criteria and regulations for the administration and evaluation of grants made under subpart 1;

(6) submit to the Secretary a list of nominees for the position of Director of the Office of Indian Education whenever a vacancy in such position occurs,[1] and

(7) submit to the Congress by no later than June 30 of each year a report on its activities, which shall include—

(A) any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate, or from which they can benefit, and

(B) a statement of the National Council's recommendations to the Secretary with respect to the funding of any such programs.

(c) CONTRACTING.—With respect to functions of the National Council described in paragraphs (2), (3), and (4) of subsection (b), the National Council is authorized to contract with any public or private nonprofit agency, institution, or organization for assistance in carrying out such functions.

(d) FUNDING.—From sums appropriated pursuant to section 400(d) of the General Education Provisions Act which are available for part D of such Act, the Secretary shall make available such sums as may be necessary to enable the National Council to carry out its functions under this section.

(25 U.S.C. 2642)

SEC. 5343. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 1989, and each of the 4 succeeding fiscal years, such sums as may be necessary to carry out the provisions of this subpart.

(25 U.S.C. 2643)

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[1] So in original. The comma probably should be a semicolon.

Subpart 5—Miscellaneous

SEC. 5351. DEFINITIONS.

For purposes of this part—

(1) The term "adult" means any individual who—

(A) is 16 years old or older, or

(B) who is beyond the age of compulsory school attendance under State law.

(2) The term "adult education" means instruction or services below college level for adults who are not enrolled in a secondary school and who do not have—

(A) the basic skills to enable them to function effectively in society, or

(B) a certificate of graduation from a school providing secondary education (and who have not achieved an equivalent level of education).

(3) The term "free public education" means education that is provided at public expense, under public supervision and direction, and without tuition charge, and that is provided as elementary or secondary education in the applicable State.

(4) The term "Indian" means any individual who is—

(A) a member (as defined by an Indian tribe, band, or other organized group) of such Indian tribe, band, or other organized group of Indians, including those Indian tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside,

(B) a descendant, in the first or second degree, of an individual described in subparagraph (A),

(C) considered by the Secretary of the Interior to be an Indian for any purpose,

(D) an Eskimo, Aleut, or other Alaska Native, or

(E) is determined to be an Indian under regulations promulgated by the Secretary after consultation with the National Advisory Council on Indian Education.

(5)(A) Except as provided in subparagraph (B), the term "local educational agency" has the meaning given to such term by section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

(B) For purposes of the formula grant of subpart 1 (except for sections 5314(b)(2)(B)(ii) and 5315(c)), the term "local educational agency" includes—

(i) any Indian tribe, or an organization controlled or sanctioned by an Indian tribal government, that operates a school for the children of that tribe if the school either—

(I) provides its students an educational program that meets the standards established by the Secretary of the Interior under section 1121 of the Education Amendments of 1978, or

(II) is operated by that tribe or organization under a contract with the Department of the Interior in accordance with the Indian Self-Determination and Education Assistance Act, and

(ii) for the fiscal year described in section 5312(b)(3)(A) and each succeeding fiscal year, any school operated by the

Bureau of Indian Affairs of the Department of the Interior, either individually or in cooperation with any other local educational agency.

(6) The term "parent" includes an individual acting in loco parentis, other than by virtue of being a school administrator or official.

(7) The term "Secretary" means the Secretary of Education.

(8) The terms "Bureau school", "contract school", and "Bureau funded school" have the respective meaning given to such terms by section 1139 of the Education Amendments of 1978 (25 U.S.C. 2019).

(25 U.S.C. 2651)

SEC. 5352. CONFORMING AMENDMENTS.

The following provisions of law are hereby repealed:

(1) The Indian Elementary and Secondary School Assistance Act.

(2) Section 1005 of the Elementary and Secondary Education Act of 1965.

(3) Section 315 of the Adult Education Act.

(4) Sections 421(b)(2), 422, 423, 441, 442, and 453 of the Indian Education Act (title IV of Public Law 92–318).

PART IV—REFUGEE AND IMMIGRANT EDUCATION

Refugee Education Assistance Act of 1980

(P.L. 96–422)

AN ACT To provide general assistance to local educational agencies for the education of Cuban and Haitian refugee children, to provide special impact aid to such agencies for the education of Cuban and Haitian refugee children and Indochinese refugee children, and to provide assistance to State educational agencies for the education of Cuban and Haitian refugee adults.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Refugee Education Assistance Act of 1980".

(8 U.S.C. 1522, note) Enacted October 10, 1980, P.L. 96–422, sec. 1, 94 Stat. 1799.

TITLE I—GENERAL PROVISIONS

DEFINITIONS

SEC. 101. As used in this Act—

(1) The terms "elementary school", "local educational agency", "secondary school", "State", and "State educational agency" have the meanings given such terms under section 198(a) of the Elementary and Secondary Education Act of 1965.

(2) The term "elementary or secondary nonpublic schools" means schools which comply with the compulsory education laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.[1]

(3) The term "eligible participant"[2] means any alien who—

(A) has been admitted into the United States as a refugee under section 207 of the Immigration and Nationality Act;

(B) has been paroled into the United States as a refugee by the Attorney General pursuant to section 212(d)(5) of such Act;

(C) is an applicant for asylum, or has been granted asylum, in the United States; or

(D) has fled from the alien's country of origin and has, pursuant to an Executive order of the President, been permitted to enter the United States and remain in the United States indefinitely for humanitarian reasons;

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[1] Pursuant to section 2(b)(1) of Public Law 99–514, any reference to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986.

[2] Section 543(a)(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35, 95 Stat. 4461) contained the following provision:

(2) For purposes of the Refugee Education Assistance Act of 1980, an alien who entered the United States on or after November 1, 1979, and is in the United States with the immigration status of a Cuban-Haitian entrant (status pending) shall be considered to be an eligible participant (within the meaning of section 101(3) of such Act), but only during the 36-month period beginning with the first month in which the alien entered the United States as such an entrant or otherwise first acquired such status.

but only during the 36-month beginning with the first month in which the alien entered the United States (in the case of an alien described in (A), (B), or (D)) or the month in which the alien applied for asylum (in the case of an alien described in subparagraph (C)).

(4) The term "Secretary" means the Secretary of Education.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 101, 94 Stat. 1799, 1800; amended August 13, 1981, P.L. 97–35, sec. 543 (a)(1), 95 Stat. 459; amended October 22, 1986, P.L. 99–514, sec. 2, 100 Stat. 2095.

AUTHORIZATIONS AND ALLOCATION OF APPROPRIATIONS

SEC. 102. (a) There are authorized to be appropriated for each of the fiscal years 1981, 1982, 1983, but only in a lump sum for all programs under this Act, subject to allocation in accordance with subsection (b), such sums as may be necessary to make payments to which State educational agencies are entitled under this Act and payments for administration under section 104.

(b)(1) If the sums appropriated for any fiscal year to make payments to States under this Act are not sufficient to pay in full the sum of the amounts which State educational agencies are entitled to receive under titles II through IV for such year, the allocations to State educational agencies under each of such titles shall be ratably reduced by the same percentage to the extent necessary to bring the aggregate of such allocations within the limits of the amounts so appropriated.

(2) In the event that funds become available for making payments under this Act for any period after allocations have been made under paragraph (1) of this subsection for such period, the amounts reduced under such paragraph shall be increased on the same basis as they were reduced.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 102, 94 Stat. 1800.

TREATMENT OF CERTAIN JURISDICTIONS

SEC. 103. (a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(b)(1) Each jurisdiction to which this section applies shall be entitled to grants for the purposes set forth in sections 201(a), 302, and 402 in amounts equal to amounts determined by the Secretary in accordance with criteria established by the Secretary, except that the aggregate of the amount to which such jurisdictions are so entitled for any period—

(A) for the purposes set forth in section 201(a), shall not exceed an amount equal to 1 percent of the amount authorized to be appropriated under section 201 for that period;

(B) for the purposes set forth in section 302, shall not exceed an amount equal to 1 percent of the aggregate of the amounts to which all States are entitled under section 301 for that period; and

(C) for the purposes set forth in section 402, shall not exceed an amount equal to 1 percent of the aggregate of the amounts to which all States are entitled under section 401 for that period.

(2) If the aggregate of the amounts determined by the Secretary pursuant to paragraph (1) to be so needed for any period exceeds an amount equal to such 1 percent limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such limitation.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 103, 94 Stat. 1800; amended August 13, 1981, P.L. 97–35, sec. 543(b), 95 Stat. 459.

STATE ADMINISTRATIVE COSTS

SEC. 104. The Secretary is authorized to pay to each State educational agency amounts equal to the amounts expended by it for the proper and efficient administration of its functions under this Act, except that the total of such payments for any period shall not exceed 2 percent of the amount which that State educational agency receives for that period under this Act.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 104, 94 Stat. 1801; amended August 13, 1981, P.L. 97–35, sec. 543(c), 95 Stat. 459.

WITHHOLDING

SEC. 105. Whenever the Secretary, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there is a failure to meet the requirements of any title of this Act, the Secretary shall notify that agency that further payments will not be made to the agency under such title, or in the discretion of the Secretary, that the State educational agency shall not make further payments under such title to specified local educational agencies or other entities (in the case of funds under title IV) whose actions cause or are involved in such failure until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, no further payments shall be made to the State educational agency under such title, or payments by the State educational agency under such title shall be limited to local educational agencies or other entities (in the case of funds under title IV) whose actions did not cause or were not involved in the failure, as the case may be.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 105, 94 Stat. 1801.

CONSULTATION WITH OTHER AGENCIES

SEC. 106. To the extent that may be appropriate to facilitate the determination of the amount of any reductions under sections 201(b)(2), 301(b)(3), and 401(b)(2), the Secretary shall consult with the heads of other agencies providing assistance to eligible participants in order to secure information concerning the disbursement of funds for educational purposes under programs administered by them and provide, wherever feasible, for coordination among those programs and the programs under titles II through IV of the Act.

(8 U.S.C. 1522, note) Enacted Aug. 13, 1981, P.L. 97–35, sec. 543(d), 95 Stat. 460.

TITLE II—GENERAL ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES

STATE ENTITLEMENTS

SEC. 201. (a) The Secretary shall, in accordance with the provisions of this title, make grants to State educational agencies for fiscal year 1981, and for each subsequent fiscal year, for the purposes of assisting local educational agencies of that State in providing basic education for eligible participants enrolled in elementary or secondary public schools. Payments made under this title to any State shall be used in accordance with applications approved under section 202 for public educational services for eligible participants enrolled in the elementary and secondary public schools under the jurisdiction of the local educational agencies of that State.

(b)(1) As soon as possible after the date of the enactment of the Consolidated Refugee Education Assistance Act, the Secretary shall establish a formula (reflecting the availability of the full amount authorized for this title under section 203(b)) by which to determine the amount of the grant which each State educational agency is entitled to receive under this title for any fiscal year. The formula established by the Secretary shall take into account the number of years that an eligible participant assisted under this title has resided within the United States and the relative costs, by grade level, of providing education for elementary and secondary school children. On the basis of the formula the Secretary shall allocate among the State educational agencies, for each fiscal year, the amounts available to carry out this title, subject to such reductions or adjustments as may be required under paragraph (2) or subsection (c). Funds shall be allocated among State educational agencies pursuant to the formula without regard to variations in educational costs among different geographical areas.

(2) The amount of the grant to which a State educational agency is otherwise entitled for any fiscal year, as determined under paragraph (1), shall be reduced by the amounts made available for such fiscal year under any other Federal law (other than section 303 of the Elementary and Secondary Education Act of 1965) for expenditure within the State for the same purposes as those for which funds are made available under this title, except that the reduction shall be made only to the extent that (A) such amounts are made available for such purposes specifically because of the refugee, parolee, or asylee status of the individuals to be served by such funds, and (B) such amounts are made available to provide assistance to individuals eligible for services under this title. The amount of the reduction required under this paragraph shall be determined by the Secretary in a manner consistent with subsection (c).

(3) For the purpose of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The entitlements of such jurisdictions shall be determined in the manner specified in section 103, but for purposes of this title and section 105 any payments made under section 103 for the purposes set forth in section 201(a) shall be considered to be payments under this title.

(c) Determinations by the Secretary under this title for any period with respect to the number of eligible participants and the amount of the reduction under subsection (b)(2) shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this title to which such agency would be entitled had such determination been made on the basis of accurate data.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 201, 94 Stat. 1801, 1802; amended August 13, 1981, P.L. 97–35, sec. 544(a), 95 Stat. 460.

APPLICATIONS

SEC. 202. (a) No State educational agency shall be entitled to any payment under this title for any period unless that agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

(1) provide that the payments under this title will be used for the purposes set forth in section 201(a);

(2) provide assurances that such payments will be distributed among local educational agencies within that State in accordance with the formula established by the Secretary under section 201, subject to any reductions in payments for those local educational agencies identified under paragraph (3) to which funds described by section 201(b)(2) are made available for the same purposes under other Federal laws;

(3) specify the amount of funds described by section 201(b)(2) which are made available under other Federal laws for expenditure within the State for the same purposes as those for which funds are made available under this title and the local educational agencies to which such funds are made available;

(4) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this title without first affording the local educational agency submitting the application for such funds reasonable notice and opportunity for a hearing; and

(5) provide for making such reports as the Secretary may reasonably require to carry out this title.

(b) The Secretary shall approve an application which meets the requirements of subsection (a). The Secretary shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 202, 94 Stat. 1802; amended August 13, 1981, P.L. 97–35, sec. 544(b), 95 Stat. 461.

PAYMENTS AND AUTHORIZATIONS

SEC. 203. (a) The Secretary shall pay to each State educational agency having an application approved under section 202 the amount which that State is entitled to receive under this title.

(b) For fiscal year 1981 and for each subsequent fiscal year, there is authorized to be appropriated in the manner specified under section 102, to make payments under this title an amount equal to the product of—

(1) the total number of eligible participants enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies within all the States (other than the jurisdictions to which section 103 is applicable) during the fiscal year for which the determination is made,

multiplied by

(2) $400.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96-422, sec. 203, 94 Stat. 1802; amended August 13, 1981, P.L. 97-35, sec. 544(c), 95 Stat. 461.

TITLE III—SPECIAL IMPACT ASSISTANCE FOR SUBSTANTIAL INCREASES IN ATTENDANCE

STATE ENTITLEMENTS

SEC. 301. (a) The Secretary shall, in accordance with the provisions of this title, make payments to State educational agencies for fiscal year 1981, and for each subsequent fiscal year, for the purpose set forth in section 302.

(b)(1) Except as provided in paragraph (3) of this subsection and in subsections (c) and (d) of this section, the amount of the grant to which a State educational agency is entitled under this title for any fiscal year shall be equal to the sum of—

(A) the amount equal to the product of (i) the number of eligible participants enrolled during the period for which the determination is made in elementary or secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, or in any elementary or secondary nonpublic school within the district served by each such local educational agency, who have been eligible participants less than one year, multiplied by (ii) $700;

(B) the amount equal to the product of (i) the number of eligible participants enrolled during the period for which the determination is made in elementary or secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, or in any elementary or secondary nonpublic school within the district served by each such local educational agency, who have been eligible participants at least one year but not more than two years, multiplied by (ii) $500; and

(C) the product of (i) the number of eligible participants enrolled during the period for which the determination is made in elementary or secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, or in any elementary or secondary nonpublic school within the district served by each such local educational agency, who have been eligible participants more than two years but not more than three years, multiplied by (ii) $300.

(2) The local educational agencies referred to in paragraph (1) are those local educational agencies in which the sum of the number of eligible participants and Indochinese refugee children who are enrolled in elementary or secondary public schools under the jurisdiction of such agencies, or in elementary or secondary nonpublic schools within the districts served by such agencies, during the fiscal year for which the payments are to be made under this title, and are receiving supplementary educational services during such period, is equal to—

(A) at least 500; or

(B) at least 5 percent of the total number of students enrolled in such public or nonpublic schools during such fiscal year;

whichever number is less. Notwithstanding the provisions of this paragraph, the local educational agencies referred to in paragraph (1) shall include local educational agencies eligible to receive assistance by reason of the last sentence of section 3(b) and section 3(c)(2)(B) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), relating to Federal impact aid, subject to paragraph (5) of this subsection.

(3) The amount of the grant to which a State educational agency is otherwise entitled for any fiscal year, as determined under paragraph (1), shall be reduced by the amounts made available under any other Federal law to agencies or other entities for educational, or education-related, services or activities within the State because of the significant concentration of eligible participants, except that no reduction under this paragraph shall be made for any funds made available to the State under section 303 of the Elementary and Secondary Education Act of 1965. The amount of the reduction required under this paragraph shall be determined by the Secretary in a manner consistent with subsection (c).

(4) For the purpose of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The entitlements of such jurisdictions shall be determined in the manner specified in section 103, but for purposes of this title and section 105 any payments made under section 103 for the purposes set forth in section 302 shall be considered to be payments under this title.

(5) The amount of the grant to which a State educational agency is entitled as a result of the last sentence of paragraph (2) shall be limited to eligible participants who meet the requirements of section 101(4).

(c) Determinations by the Secretary under this title for any period with respect to the number of eligible participants and the amount of the reduction under subsection (b)(3) shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this title to which such agency would be entitled had such determination been made on the basis of accurate data.

(d) Whenever the Secretary determines that any amount of a payment made to a State under this title for a fiscal year will not be used by such State for carrying out the purpose for which the payment was made, the Secretary shall make such amount available for carrying out such purpose to one or more other States to the extent the Secretary determines that such other States will be able to use such additional amount for carrying out such purpose. Any amount made available to a State from an appropriation for a fiscal year in accordance with the preceding sentence shall, for purposes of this title, be regarded as part of such State's payment (as determined under subsection (b)) for such year, but shall remain available until the end of the succeeding fiscal year.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 301, 94 Stat. 1803–1805; amended August 13, 1981, sec. 545(b), 95 Stat. 461.

USES OF FUNDS

SEC. 302. (a) Payments made under this title to any State may be used in accordance with applications approved under section 303 for supplementary educational services and costs, as described under subsection (b) of this section, for eligible participants enrolled in the elementary and secondary public schools under the jurisdiction of the local educational agencies of the State described in section 301(b)(2) and in elementary and secondary nonpublic schools of that State within the districts served by such agencies.

(b) Financial assistance provided under this title shall be available to meet the costs of providing eligible participants supplementary educational services, including but not limited to—

(1) supplementary educational services necessary to enable those children to achieve a satisfactory level of performance, including—

(A) English language instruction;

(B) other bilingual educational services; and

(C) special materials and supplies;

(2) additional basic instructional services which are directly attributable to the presence in the school district of eligible participants, including the costs of providing additional classroom supplies, overhead costs, costs of construction, acquisition or rental of space, costs of transportation, or such other costs as are directly attributable to such additional basic instructional services; and

(3) special inservice training for personnel who will be providing instruction described in either paragraph (1) or (2) of this subsection.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 302, 94 Stat. 1805; amended August 13, 1981, P.L. 97–35, sec. 545(b), 95 Stat. 460.

APPLICATIONS

SEC. 303. (a) No State educational agency shall be entitled to any payment under this title for any period unless that agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

(1) provide that the educational programs, services and activities for which payments under this title are made will be administered by or under the supervision of the agency;

(2) provide assurances that payments under this title will be used for purposes set forth in section 302;

(3) provide assurances that such payments will be distributed among local educational agencies within that State in accordance with section 301, subject to any reductions in payments for local educational agencies identified under paragraph (5) to take into account the funds described by section 301(b)(3) that are made available for educational, or education-related, services or activities for eligible participants enrolled in elementary or secondary public schools under the jurisdiction of such agencies or elementary or secondary nonpublic schools within the districts served by such agencies;

(4) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this title without first affording the local educational agency submitting an application for such funds reasonable notice and opportunity for a hearing;

(5) specify (A) the amount of funds described by section 301(b)(3) that are made available under other Federal laws to agencies or other entities for educational, or education-related, services or activities within the State because of a significant concentration of eligible participants, and (B) the local educational agencies within whose districts are eligible participants provided services from such funds who are enrolled in elementary or secondary schools under the jurisdiction of such agencies, or in elementary or secondary nonpublic schools served by such agencies;

(6) provide for making such reports as the Secretary may reasonably require to perform his functions under this Act; and

(7) provide assurances—

(A) that to the extent consistent with the number of eligible participants enrolled in the elementary or secondary nonpublic schools within the district served by a local educational agency, such agency, after consultation with appropriate officials of such schools, shall provide for the benefit of these children secular, neutral, and nonideological services, materials, and equipment necessary for the education of such children;

(B) that the control of funds provided under this paragraph and the title to any materials, equipment, and property repaired, remodeled, or constructed with those funds shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer such funds and property; and

(C) that the provision of services pursuant to this paragraph shall be provided by employees of a public agency or through contract by such public agency with a person, association, agency or corporation who or which, in the provision of such services, is independent of such elementary or secondary nonpublic school and of any religious organization; and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this paragraph shall not be commingled with State or local funds.

The Secretary shall approve an application which meets the requirements of subsection (a). The Secretary shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 303, 94 Stat. 1805, 1806; amended August 13, 1981, P.L. 97–35, sec. 545(c), 95 Stat. 462.

PAYMENTS

SEC. 304. (a) The Secretary shall pay to each State educational agency having an application approved under section 303 the amount which that State is entitled to receive under this title.

(b) If a State is prohibited by law from providing public educational services for children enrolled in elementary and secondary nonpublic schools, as required by section 303(a)(6), or if the Secretary determines that a local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in such schools, the Secretary may waive such requirement and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this Act.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 304, 94 Stat. 1806, 1807.

TITLE IV—ADULT EDUCATION PROGRAMS

STATE ENTITLEMENTS

SEC. 401. (a) The Secretary shall, in accordance with the provisions of this title, make payments to State educational agencies for fiscal year 1982, and for each subsequent fiscal year for the purposes of providing for the operation of adult education programs as described under section 402 for eligible participants aged 16 or older. Payments made under this title to any State shall be used in accordance with applications approved under section 403.

(b)(1) Except as provided in subsection (c) of this section, the amount of the grant to which a State educational agency is entitled under this Act, for any fiscal year described in subsection (a), shall be equal to the product of—

(A) the number of eligible participants aged 16 or older who are enrolled, during the period for which the determination is made, in programs of instruction referred to in section 402 which are offered within that State, other than any such refugees who are enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies;

multiplied by—

(B) $300.

(2) The amount of the grant to which a State educational agency is otherwise entitled for any fiscal year, as determined under paragraph (1), shall be reduced by the amounts made available for

such fiscal year under any other Federal law (other than section 303 of the Elementary and Secondary Education Act of 1965) for expenditure within the State for the same purposes as those for which funds are made available under this title, except that the reduction shall be made only to the extent that (A) such amounts are made available for such purposes specifically because of the refugee, parolee, or asylee status of the individuals to be served by such funds, and (B) such amounts are made available to provide assistance to individuals eligible for services under this title. The amount of the reduction required under this paragraph shall be determined by the Secretary in a manner consistent with subsection (c).

(3) For the purpose of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The entitlements of such jurisdictions shall be determined in the manner specified in section 103, but for purposes of this title and section 105 any payments made under section 103 for the purposes set forth in section 402 shall be considered to be payments under this title.

(c) Determinations by the Secretary under this title for any period with respect to the number of eligible participants and the amount of the reduction under subsection (b)(2) shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this title to which such agency would be entitled had such determination been made on the basis of accurate data.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 401, 94 Stat. 1807; amended August 13, 1981, P.L. 97–35, sec. 546(a), (b), 95 Stat. 463.

USE OF FUNDS

SEC. 402. (a) Funds made available to State educational agencies under this title shall be used by such agencies to provide for programs of adult education and adult basic education to eligible participants aged 16 or older in need of such services who are not enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies. Such programs may be provided directly by the State educational agency, or such agency may make grants, or enter into contracts, with local educational agencies, and other public or private nonprofit agencies, organizations, or institutions to provide for such programs. Funds available under this title may be used for—

(1) programs of instruction of such adult refugees in basic reading and mathematics, in development and enhancement of necessary skills, and for the promotion of literacy among such refugees;

(2) administrative costs of planning and operating such programs of instruction;

(3) educational support services which meet the need of such adult refugees, including guidance and counseling with regard to educational, career, and employment opportunities; and

(4) special projects designed to operate in conjunction with existing Federal and non-Federal programs and activities to develop occupational and related skills for individuals, particularly programs authorized under the Comprehensive Employment and Training Act of 1973 or under the Vocational Education Act of 1963.

(b) The State educational agency shall review applications for grants and contracts in a manner consistent with the purposes of paragraphs (12) and (13) of section 306(b) of the Adult Education Act.

(c) The State educational agency shall provide for the use of funds made available under this title in such manner that the maximum number of eligible participants aged 16 or older residing within the State receive education under the programs of instruction described under subsection (a).

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 402, 94 Stat. 1808; amended August 13, 1981, P.L. 97–35, sec. 546(a), (c), 95 Stat. 463.

APPLICATIONS

SEC. 403. (a) No State educational agency shall be entitled to any payment under this title for any period unless that agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

(1) provide that payments made under this title will be used only for the purposes, and in the manner, set forth in section 402;

(2) specify the amount of reduction required under section 401(b)(2);

(3) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this title without first affording the entity submitting an application for such funds reasonable notice and opportunity for a hearing; and

(4) provide for making periodic reports to the Secretary evaluating the effectiveness of the payments made under this title, and such other reports as the Secretary may reasonably require to perform his functions under this Act.

(b) The Secretary shall approve an application which meets the requirements of subsection (a). The Secretary shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

(8 U.S.C. 1522, note) Enacted Oct. 10 1980, P.L. 96–422, sec. 403, 94 Stat. 1808; amended August 13, 1981, P.L. 97–35, sec. 546(c), 95 Stat. 463.

TITLE V—OTHER PROVISIONS RELATING TO CUBAN AND HAITIAN ENTRANTS

AUTHORITIES FOR OTHER PROGRAMS AND ACTIVITIES

SEC. 501. (a)(1) The President shall exercise authorities with respect to Cuban and Haitian entrants which are identical to the authorities which are exercised under chapter 2 of title IV of the Immigration and Nationality Act. The authorizations provided in section 414 of that Act shall be available to carry out this section without regard to the dollar limitation contained in section 414(a)(2).

(2) Any reference in chapter III of title I of the Supplemental Appropriations and Rescission Act, 1980, to section 405(c)(2) of the International Security and Development Assistance Act of 1980 or to the International Security Act of 1980 shall be construed to be a reference to paragraph (1) of this subsection.

(b) In addition, the President may, by regulation, provide that benefits granted under any law of the United States (other than the Immigration and Nationality Act) with respect to individuals admitted to the United States under section 207(c) of the Immigration and Nationality Act shall be granted in the same manner and to the same extent with respect to Cuban and Haitian entrants.

(c)(1)(A) Any Federal agency may, under the direction of the President, provide assistance (in the form of materials, supplies, equipment, work, services, facilities, or otherwise) for the processing, care, maintenance, security, transportation, and initial reception and placement in the United States of Cuban and Haitian entrants. Such assistance shall be provided on such terms and conditions as the President may determine.

(B) Funds available to carry out this subsection shall be used to reimburse State and local governments for expenses which they incur for the purposes described in subparagraph (A). Such funds may be used to reimburse Federal agencies for assistance which they provide under subparagraph (A).

(2) The President may direct the head of any Federal agency to detail personnel of that agency, on either a reimbursable or nonreimbursable basis, for temporary duty with any Federal agency directed to provide supervision and management for purposes of this subsection.

(3) The furnishing of assistance or other exercise of functions under this subsection shall not be considered a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

(4) Funds to carry out this subsection may be available until expended.

(5) [Repealed by P.L. 96–424]

(d) The authorities provided in this section are applicable to assistance and services provided with respect to Cuban or Haitian entrants at any time after their arrival in the United States, including periods prior to the enactment of this section.

(e) As used in this section, the term "Cuban and Haitian entrant means—

(1) any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) any other national of Cuba or Haiti—

(A) who—

(i) was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) has an application for asylum pending with the Immigration and Naturalization Service; and

(B) with respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

(8 U.S.C. 1522, note) Enacted Oct. 10, 1980, P.L. 96–422, sec. 501, 94 Stat. 1809, 1810; repealed in part Oct. 10, 1980, P.L. 96–424, sec. 1, 94 Stat. 1820 (effective Oct. 11, 1980).

PART V—HOMELESS EDUCATION

TITLE I—GENERAL PROVISIONS

SECTION 101. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Stewart B. McKinney Homeless Assistance Act".

(b) TABLE OF CONTENTS.—

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TITLE VII—EDUCATION, TRAINING, AND COMMUNITY SERVICES PROGRAMS

Subtitle A—Adult Education for the Homeless

Sec. 701. Amendment to Adult Education Act.
Sec. 702. State literacy initiatives.

Subtitle B—Education for Homeless Children and Youth

Sec. 721. Statement of policy.
Sec. 722. Grants for State and local activities for the education of homeless children and youth.
Sec. 723. Local educational agency grants for the education of homeless children and youth.
Sec. 724. National responsibilities.
Sec. 725. Reports.
Sec. 726. Definitions.

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(42 U.S.C. 11301 note)

TITLE VII—EDUCATION, TRAINING, AND COMMUNITY SERVICES PROGRAMS

Subtitle A—Adult Education for the Homeless

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SEC. 702. STATE LITERACY INITIATIVES.

(a) GENERAL AUTHORITY.—The Secretary of Education shall make grants to State educational agencies to enable each such agency to implement, either directly or through contracts and grants, a program of literacy training and basic skills remediation for adult homeless individuals within the State, which shall—

(1) include a program of outreach activities; and

(2) be coordinated with existing resources such as community-based organizations, VISTA recipients, adult basic education program recipients, and nonprofit literacy-action organizations.

(b) APPLICATION.—Each State educational agency desiring to receive its allocation under this section shall submit to the Secretary of Education an application at such time, in such manner, and containing such information as the Secretary may reasonably require. Each such application shall include an estimate of the number of homeless expected to be served.

(c) AUTHORIZATION OF APPROPRIATIONS; ALLOCATION.—

(1) There is authorized to be appropriated $10,000,000 for each of the fiscal years 1989 and 1990, $13,700,000 for fiscal year 1991, and such sums as may be necessary in each of the fiscal years 1992, and 1993, for the adult literacy and basic skills remediation programs authorized by this section.

(2) The Secretary of Education shall distribute funds to States on the basis of the assessments of the homeless population in the States made in the comprehensive plans submitted under this Act, except that no State shall receive less than $75,000 under this section.

(d) DEFINITION.—As used in this section, the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(42 U.S.C. 11421)

Subtitle B—Education for Homeless Children and Youth

SEC. 721. STATEMENT OF POLICY.

It is the policy of the Congress that—

(1) each State educational agency shall assure that each child of a homeless individual and each homeless youth have access to a free, appropriate public education which would be provided to the children of a resident of a State and is consistent with the State school attendance laws;

(2) in any State that has a residency requirement as a component of its compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and homeless youth, the State will review and undertake steps to revise such laws, regulations, practices, or policies to assure that the children of homeless individuals and homeless youth are afforded a free and appropriate public education; and

(3) homelessness alone should not be sufficient reason to separate students from the mainstream school environment.

(42 U.S.C. 11431)

SEC. 722. GRANTS FOR STATE AND LOCAL ACTIVITIES FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH.

(a) GENERAL AUTHORITY.—The Secretary of Education is, in accordance with the provisions of this section, authorized to make grants to States to carry out the activities described in subsections (c), (d), and (e).

(b) ALLOCATION.—From the amounts appropriated for each fiscal year pursuant to subsection (g), the Secretary shall allot to each State an amount which bears the same ratio to the amount appropriated in each such year as the amount allocated under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 to the local educational agencies in the State in that year bears to the total amount allocated to such agencies in all States, except that no State shall receive less than $50,000. The Secretary shall reserve 0.1 percent of the amount appropriated for each fiscal year to be allocated by the Secretary among the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 90-658), according to their respective need, as determined by the Secretary, except that no such territory shall receive less in fiscal year 1991 than it received in fiscal year 1990. The Secretary may also reserve not to exceed 1 percent of the amount appropriated for each fiscal year for programs for Indian students served by schools funded by the Secretary of the Interior, as determined under the Indian Self-Determination and Education Assistance Act consistent with the purposes of this Act. As used in this subsection, the term "State" shall not include the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or Palau.

(c) AUTHORIZED ACTIVITIES.—Grants under this section shall be used—

(1) to carry out the policies set forth in section 721 in the State;

(2) to provide activities for and services to homeless children and homeless youths that enable such children and youths to enroll in, attend, and achieve success in school;

(3) to establish or designate an Office of Coordinator of Education of Homeless Children and Youth in accordance with subsection (d);

(4) to prepare and carry out the State plan described in subsection (e);

(5) to develop and implement programs for school personnel to heighten awareness of specific problems of the education of homeless children and youth; and

(6) if amounts appropriated for the applicable fiscal year exceed the amount appropriated for fiscal year 1990 under this section, to provide grants to local educational agencies for purposes of this section, and if such amounts appropriated do not exceed the amount appropriated for fiscal year 1991, the State education agency, at the discretion of such agency, may provide such grants.

(d) FUNCTIONS OF THE OFFICE OF COORDINATOR.—The Coordinator of Education of Homeless Children and Youth established in each State shall—

(1) once every two years, gather data on the number and location of homeless children and youth in the State, and such data gathering shall include the number of homeless children

and homeless youths enrolled in schools in the State, determined through random sampling or other statistical methods that ensure that such children and youths are not overtly identified as being homeless, the nature and extent of problems of access to, and placement of, homeless children and homeless youth in elementary and secondary schools, the difficulties in identifying the special needs of such children, and any progress made by the State educational agency and local educational agencies within the State in addressing such problems and difficulties;

(2) develop and carry out the State plan described in subsection (e);

(3) prepare and submit to the Secretary not later than December 31, 1991, and on December 31 of every second year thereafter a report on the data gathered pursuant to paragraph (1);

(4)[1] facilitate coordination between the State education agency, the State social services agency, and other agencies providing services to homeless children and youth and their families; and

(5)[1] develop relationships and coordinate with other relevant education, child development, or preschool programs and providers of services to homeless children, homeless families, and runaway and homeless youths (including domestic violence agencies, shelter operators, transitional housing facilities, runaway and homeless youth centers, and transitional living programs for homeless youths) in order to improve the provision of comprehensive services to homeless children and homeless youths and the families of such children and youths.

To the extent that reliable current data is available in the State, each coordinator described in this subsection may use such data to fulfill the requirements of paragraph (1).

(e) STATE PLAN.—

(1) Each State shall adopt a plan to provide for the education of each homeless child or homeless youth within the State which will contain provisions designed to—

(A) authorize the State educational agency, the local educational agency, the parent or guardian of the homeless child, the homeless youth, or the applicable social worker to make the determinations required under this section;

(B) provide procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youth;

(C)[2] develop programs for school personnel (including principals, attendance officers, teachers, and enrollment personnel), to heighten the awareness of such personnel of the specific educational needs of runaway and homeless youths; and[3]

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[1] Section 612(b)(7) of Pub. L. 101–645 added paragraphs (4) and (5) "at the end" of section 722(d). Probably should have been added after the end of paragraph (3) of subsection (d).

[2] So in original.

[3] So in original. The word "and" probably should not appear.

(D) ensure that homeless children and homeless youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local food programs.[1]

(E) ensure that homeless children and homeless youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local before- and after-school care programs and provide for the disclosure of data concerning the participation of such children in such programs in plans submitted by the State after the initial plan of the State;

(F) address problems set forth in the report provided to the Secretary under subsection (d)(3);

(G) address problems with respect to the education of homeless children and homeless youths, including problems caused by—

(i) transportation issues; and

(ii) enrollment delays which are caused by—

(I) immunization requirements;

(II) residency requirements;

(III) lack of birth certificates, school records, or other documentation; or

(IV) guardianship issues;

(H) demonstrate that the State and local educational agencies in the State have developed and will review and revise policies to remove barriers to the enrollment and retention of homeless children and homeless youths in schools of the State; and

(I) ensure that the State educational agency and local educational agencies within the State will adopt policies and practices to ensure that homeless children and homeless youths are not isolated or stigmatized.

(2) Each plan adopted under this subsection shall assure, to the extent practicable under requirements relating to education established by State law, that local educational agencies within the State will comply with the requirements of paragraphs (3) through (9).

(3)(A)[2] The local educational agency of each homeless child and each homeless youth shall either—

(i) continue the child's or youth's education in the school of origin—

(I) for the remainder of the academic year; or

(II) in any case in which a family becomes homeless between academic years, for the following academic year; or

(ii) enroll the child or youth in any school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend;

whichever is in the child's best interest or the youth's best interest.

(B) In determining the best interests of the child or youth for purposes of making a school assignment under subparagraph (A), consideration shall be given to a request made by a parent regarding school selection.

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[1] So in law. Probably should be a semicolon. See Pub.L. 101–645, sec. 612(b)(8)(C), 104 Stat. 4737.

[2] So in original. Margins are incorrect. This paragraph probably should be indented two ems to the right

(C) For purposes of this paragraph, the term "school of origin" shall mean the school that the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled.

(4) The choice regarding placement shall be made regardless of whether the child or youth is living with the homeless parents or has been temporarily placed elsewhere by the parents.

(5) Each homeless child shall be provided services comparable to services offered to other students in the school selected according to the provisions of paragraph (3), including transportation services, educational services for which the child meets the eligibility criteria, such as compensatory educational programs for the disadvantaged, and educational programs for the handicapped and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; and school meals programs.

(6) Any record ordinarily kept by the school, including immunization records, academic records, birth certificates, guardianship records, and evaluations for special services or programs, of each homeless child or youth shall be maintained—

(A) so that the records are available, in a timely fashion, when a child or youth enters a new school district; and

(B) in a manner consistent with section 438 of the General Education Provisions Act.

(7)[1] Each local educational agency serving homeless children or youth that receives assistance under this title shall coordinate with local social services agencies, and other agencies or programs providing services to such children or youth and their families.

(8)[1] Each local educational agency that receives assistance under this title shall designate a homelessness liaison to ensure that—

(A)[1] homeless children and youth enroll and succeed in the schools of that agency; and

(B)[1] homeless families, children and youth receive educational services for which they are eligible, and referrals to health care services, dental services, mental health services, and other appropriate services.

State coordinators and local educational agency liaisons shall inform school personnel, service providers and advocates working with homeless families of the duties of the liaisons.

(9)[1] Each State and local educational agency shall review and revise any policies that may act as barriers to the enrollment of homeless children and youth in schools selected in accordance with paragraph (3). In reviewing and revising such policies, consideration shall be given to issues concerning transportation, requirements of immunization, residency, birth certificates, school records, or other documentation, and guardianship. Special attention shall be given to ensuring the enrollment and attendance of homeless children and youths who are not currently attending school.

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[1] So in original. Margins are incorrect.

(f) APPLICATION.—No State may receive a grant under this section unless the State educational agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) There is authorized to be appropriated to carry out this section $50,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(2)[1] The State educational agency may reserve not to exceed 5 percent of the amount received by such agency under this section in each fiscal year, or an amount equal to the amount received by such State agency for State activities under this section in fiscal year 1990, whichever is greater, to conduct activities under paragraphs (1) through (5) of subsection (c).

(3)(A)[1] In any fiscal year in which the amount appropriated under paragraph (1) does not equal or exceed $100,000,000, the State educational agency shall use funds not otherwise reserved under paragraph (2) to award grants to local educational agencies in accordance with subsection (c)(6).

(B) In any fiscal year in which the amount appropriated under paragraph (1) equals or exceeds $100,000,000, the State educational agency shall use funds not otherwise reserved under paragraph (2) to allocate to each local educational agency an amount that bears the same ratio to amount not otherwise reserved as the aggregate amount received by such local educational agency under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 for such fiscal year bears to the aggregate amount received by all local educational agencies in the State for purposes of carrying out such part for such fiscal year.

(4) Sums appropriated in each fiscal year shall remain available for the succeeding fiscal year.

(42 U.S.C. 11432)

SEC. 723. LOCAL EDUCATIONAL AGENCY GRANTS FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH.

(a) GENERAL AUTHORITY.—

(1) GRANTEES AND PURPOSE OF GRANTS.—The State educational agency shall, in accordance with section 722(c)(6) and from amounts made available to such agency under section 722, make grants to local educational agencies for the purpose of facilitating the enrollment, attendance and success of homeless children and youths in schools.

(2) USE OF GRANTS.—Unless otherwise specified, services under paragraph (1) may be provided through programs on school grounds or at other nonsectarian facilities. Where services are provided through programs on school grounds, such services may also be made available to children or youths who are determined by the local educational agency to be at risk of failing in or dropping out of schools, except that priority for such services shall be given to homeless children and homeless youths. To the maximum extent practicable, services shall be

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[1] So in original. Margins are incorrect.

provided through existing programs and mechanisms that integrate homeless individuals with nonhomeless individuals.

(3) REGULAR ACADEMIC PROGRAM.—Services provided under this section are not intended to replace the regular academic program.

(b) AUTHORIZED ACTIVITIES.—

(1) PRIMARY ACTIVITIES.—Not less than 50 percent of amounts provided under a grant under this section shall be used to provide tutoring, remedial education services, or other education services to homeless children or homeless youths.

(2) RELATED ACTIVITIES.—Not less than 35, nor more than 50, percent of the amounts provided under a grant under this section may be used for activities that may include—

(A) the provision of expedited evaluations of the strengths and needs of homeless children and homeless youths, including needs and eligibility for programs and services (including gifted and talented programs, special education programs, programs for students with limited English proficiency, and remedial services);

(B) professional development for educators and other school personnel that is designed to develop awareness and sensitivity to the needs of homeless children and homeless youths and the rights of such children and youths under this Act;

(C) the provision of referral services to homeless children and homeless youths for medical, dental, mental, and other health services;

(D) the provision of assistance to defray the excess cost of transportation for students not provided under section 722(e)(5) and not otherwise provided through Federal, State, or local funding, where necessary to enable students to attend the school selected under section 722(e)(3);

(E) the provision of developmentally appropriate early childhood programs for preschool age children;

(F) the provision of before- and after-school and summer programs for homeless children or homeless youths in which a teacher or other qualified individual provides tutoring, homework assistance, and supervision of educational activities;

(G) where necessary, the payment of fees and other costs associated with tracking, obtaining, and transferring records necessary to enroll homeless children or homeless youths in school, including birth certificates, immunization records, academic records, guardianship records, and evaluations for special programs or services;

(H) the provision of parent education and training to the parents of homeless children and homeless youths about the rights of and resources available to such children and youths;

(I) the development of coordination between schools and agencies providing services to homeless children and homeless youths;

(J) the provision of counseling, social work and psychological services, including violence counseling, and referrals for such services;

(K) activities to address the particular needs of homeless children and homeless youths that may arise from domestic violence;

(L) activities to develop and implement programs for school personnel to heighten the awareness of such personnel of the specific educational needs of runaway and homeless youths;

(M) the adaptation of space and the purchase of supplies for nonschool facilities made available under subsection (a)(2) to provide services under this subsection;

(N) the provision of school supplies to be distributed at the shelter or temporary housing facilities; and

(O) the provision of such other extraordinary or emergency assistance determined by the Secretary as essential to enable homeless children and youth to attend school.

(3) ELIGIBILITY.—No State or local educational agency may receive a grant under this section unless the State in which the agency is located has submitted a State plan as required by section 722(e).

(c) AWARDS.—

(1) BASIS.—Except as provided in section 722(g)(3)(B), from amounts appropriated for each fiscal year under section 722(g), the State educational agency may award grants under this section to local educational agencies submitting an application under subsection (d) on the basis of the need of such agencies.

(2) DETERMINATION.—In determining need under paragraph (1), the State educational agency may consider the number of homeless children and homeless youth enrolled in preschool, elementary, and secondary schools within the area served by the agency, and shall consider the needs of such children and youth, and the ability of the agency to meet such needs. Such agency may also consider—

(A) the extent to which the proposed use of funds would facilitate the enrollment, retention, and educational success of homeless children and youth;

(B) the extent to which the application reflects coordination with other local and State agencies that serve homeless children and youth, as well as the State Plan required by section 722(e);

(C) the extent to which the applicant exhibits in the application and in current practice a commitment to education for all homeless children and youth in its jurisdiction; and

(D) other criteria as the agency determines appropriate.

(d) APPLICATION.—

(1) IN GENERAL.—A local educational agency that desires to receive a grant under this section shall submit an application to the State educational agency at such time, in such manner, and containing or accompanied by such information as the

State agency may reasonably require according to guidelines issued by the Secretary. Each such application shall include—

(A) a description of the services and programs for which assistance is sought and the problems sought to be addressed through the provision of such services and programs;

(B) assurances that the applicant complies with or will use requested funds to come into compliance with paragraphs (3) through (9) of section 722(e);

(C) an assurance that assistance under the grant will supplement and not supplant funds used before the award of the grant for purposes of providing services to homeless children and homeless youths; and

(D) a description of policies and procedures that the agency will implement to ensure that activities carried out by the agency will not isolate or stigmatize homeless children and homeless youth.

(3)[1] TERM OF AWARDS.—Grants awarded under this section shall be for terms of not to exceed 2 years.

(e) REPORTS.—Each State educational agency that receives a grant under this section for any fiscal year shall, as part of the plan of the State submitted under section 722(c)(4), provide to[2] Secretary data concerning—

(1) the number of homeless children and homeless youths served with assistance provided under the grant under this section; and

(2) a description of the success of the program under this section in allowing homeless children and homeless youths to enroll in, attend, and succeed in school.

(42 U.S.C. 11433)

SEC. 724. NATIONAL RESPONSIBILITIES.

(a) GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall prepare and submit to the Congress not later than June 30, 1988, a report on the number of homeless children and youth in all States.

(b) SECRETARIAL RESPONSIBILITIES.—

(1) The Secretary shall monitor and review compliance with the provisions of this subtitle in accordance with the provisions of the General Education Provisions Act. In reviewing the State plans submitted by the State educational agencies under section 722(e), the Secretary shall evaluate whether State laws, policies, and practices described in such plans adequately address the problems of homeless children and homeless youth relating to access to education and placement as described in such plans.

(2)(A)[3] The Secretary, in consultation with persons and organizations that are knowledgeable about the needs of homeless children and youth, shall, through the awarding of a grant, or through entering into a contract or cooperative agreement, conduct a study to determine the best means of identifying, locating, and counting homeless children and youth for the purposes of this subtitle. Such persons and organizations to be consulted shall include representatives of State coordinators, local educational agencies with substantial numbers of homeless children and youth, local government agencies with responsibility for administering homeless shelters, and advocacy groups representing the interests of homeless children and youth. The Secretary shall also consult with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, as appropriate, in carrying out this paragraph.

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[1] So in original. Probably should be "(2)".

[2] So in original. Probably should be "to the".

[3] So in original. The margins are incorrect in paragraphs (2) and (3) as added by section 612(d)(3) of P.L. 101–645 (104 Stat. 4742).

(B) The study conducted under subparagraph (A) shall consider—

(i) the appropriate definition of the terms "homeless child" and "homeless youth";

(ii) the experience of the 1990 Census in identifying, locating, and counting homeless children and youth;

(iii) appropriate methodologies for identifying, locating, and counting such children and youth, including using schools, shelters, and other social service agencies to collect data; and

(iv) the projected accuracy of the methodologies identified in clause (iii), and the costs associated with the use of each methodology;

to determine the number of homeless children and youth in the United States to create as accurate an account as possible of the number, location, and living circumstances of such children and youth, including the number of such children and youth that are attending school regularly, part-time, or not at all, and reasons for the nonattendance of such children and youth.

(C)(i) Not later than 240 days after the date of enactment of this paragraph, the Secretary shall prepare and submit, to the appropriate committees of Congress, a report containing the results of the study conducted under subparagraph (A) and the estimated costs of making the estimates required under clause (ii).

(ii) Not later than December 1, 1992, the Secretary, in consultation with the appropriate committees of Congress, and through the use of appropriate statistical methodology, shall, through a grant, contract or cooperative agreement, determine accurate estimates of the number of homeless children and youth throughout the Nation and the number of such children and youth attending school.

(D) The Secretary may reserve not more than $250,000 from amounts appropriated under section 722(g) in 1991 to carry out the study required under subparagraph (A).

(E) There are authorized to be appropriated such sums as may be necessary in 1992 to prepare the report and estimates required under subparagraph (C).

(3) The Secretary shall provide such support and technical assistance to the State educational agencies as is required by such agencies to carry out their responsibilities under this subtitle, [1]

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[1] So in law. Probably should end with a period instead of a comma.

(4) The Secretary shall prepare and submit a report to the Congress on the programs and activities authorized by this subtitle at the end of each fiscal year.

(5) The Secretary shall compile and submit a report to the Congress containing the information received from the States pursuant to section 722(d)(3) within 45 days of its receipt.

(5)[1] The Secretary shall conduct evaluation and dissemination activities of programs designed to meet the educational needs of homeless elementary and secondary school students.

(6)[2] The Secretary shall require applications for grants under this subtitle to be submitted to the Secretary not later than the expiration of the 60-day period beginning on the date that funds are available for purposes of making such grants and shall make such grants not later than the expiration of the 120-day period beginning on such date.

(7)[3] The Secretary, based on the information received from the States and information gathered by the Secretary under paragraph (1), shall determine the extent to which State educational agencies are ensuring that each homeless child and homeless youth has access to a free appropriate public education as described in section 721(1).

(42 U.S.C. 11434)

SEC. 725. REPORTS.

Not later than 2 years after the date of enactment of this subsection, the Comptroller General of the United States, in consultation with the Secretary, shall prepare and submit to the appropriate Committees of Congress a report containing the findings of a study conducted to determine the most effective method of distributing funds provided under this subtitle to State educational agencies and local educational agencies.

(42 U.S.C. 11434a)

SEC. 726. DEFINITIONS.

As used in this subtitle—

(1) the term "Secretary" means the Secretary of Education; and

(2) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(42 U.S.C. 11435)

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[1] So in law. Probably should be (6).
[2] So in law. Probably should be (7).
[3] So in law. Probably should be (8).

PART VI—NATIVE HAWAIIAN EDUCATION

(Title IV of Public Law 100–297)

TITLE IV—EDUCATION FOR NATIVE HAWAIIANS

SEC. 4001. FINDINGS.

The Congress finds and declares that—

(1) the Federal Government retains the legal responsibility to enforce the administration of the State of Hawaii's public trust responsibility for the betterment of the conditions of Native Hawaiians;

(2) in furtherance of the responsibility for the betterment of the conditions of Native Hawaiians, Congress has the power to specially legislate for the benefit of Native Hawaiians;

(3) the attainment of educational success is critical to the betterment of the conditions of Native Hawaiians;

(4) it is the policy of the Federal Government to encourage the maximum participation of Native Hawaiians in the planning and management of Native Hawaiian Education Programs;

(5) Native Hawaiian students score below national norms on standardized education achievement tests;

(6) both public and private schools show a pattern of low percentages of Native Hawaiian students in the uppermost achievement levels and in gifted and talented programs;

(7) Native Hawaiian students are over-represented among those qualifying for special education programs provided to learning disabled, educable mentally retarded, handicapped, and other such students;

(8) Native Hawaiians are disproportionately represented in many negative social and physical statistics, indicative of special educational needs—

(A) lower educational attainment among Native Hawaiians has been found to relate to lower socioeconomic outcomes;

(B) Native Hawaiian students are disproportionately under-represented in Institutions of Higher Education;

(C) Native Hawaiians are under-represented in both traditional white collar professions, health care professions, and the newly emerging technology based professions and are over-represented in service occupations;

(D) Native Hawaiians are beset with multiple health problems;

(E) Native Hawaiian children are disproportionately victimized by child abuse and neglect, a signal of family stress; and

(F) there are and will continue to be geographically rural, isolated areas with a high Native Hawaiian population density; and

(9) special efforts in education recognizing the unique cultural and historical circumstances of Native Hawaiians are required.

(20 U.S.C. 4901)

SEC. 4002. PURPOSE.

It is the purpose of this title to—

(1) authorize and develop supplemental educational programs to benefit Native Hawaiians,

(2) provide direction and guidance to appropriate Federal, State, and local agencies to focus resources, including those made available by this title on the problem of Native Hawaiian education, and

(3) supplement and expand existing programs and authorities in the area of education to further the purposes of this title.

(20 U.S.C. 4902)

SEC. 4003. NATIVE HAWAIIAN MODEL CURRICULUM IMPLEMENTATION PROJECT.

(a) CURRICULUM DEVELOPMENT AUTHORITY.—In order to implement the Kamehameha Elementary Education Program (KEEP) model curriculum developed by the Kamehameha Elementary Demonstration School in appropriate public schools, the Secretary shall make direct grants to—

(1) the State of Hawaii (University of Hawaii) for comprehensive teacher training;

(2) the State of Hawaii (Department of Education) for educational support services;

(3) the Kamehameha Schools/Bernice Pauahi Bishop Estate for continued research and development; and

(4) the Kamehameha Schools/Bernice Pauahi Bishop Estate and the State of Hawaii for the establishment of long-term followup and assessment activities.

(b) SPECIAL RULE.—By no later than school year 1992–1993, the Secretary shall assure that the State of Hawaii (Department of Education) has implemented the KEEP model curriculum in a minimum of twenty public schools.

(c) ADMINISTRATIVE COSTS.—No more than 7 percent of the funds appropriated to carry out the provisions of this section for any fiscal year may be used for administrative purposes.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $3,000,000 for fiscal year 1988, and such sums as may be necessary for fiscal years 1989 through 1993, to carry out the provisions of this Act.[1] Such funds shall remain available until expended.

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[1] So in original. Probably should be "section".

(20 U.S.C. 4903)

SEC. 4004. NATIVE HAWAIIAN FAMILY-BASED EDUCATION CENTERS.

(a) Family-Based Education Centers General Authority.—The Secretary shall make direct grants to Native Hawaiian Organizations (including Native Hawaiian Educational Organizations) to develop and operate a minimum of eleven Family-Based Education Centers throughout the Hawaiian Islands. Such centers shall include—

(1) Parent-Infant programs (prenatal through age 3);
(2) Preschool programs for four and five year-olds;
(3) continued research and development; and
(4) a long term followup and assessment program.

(b) Administrative Costs.—No more than 7 percent of the funds appropriated to carry out the provisions of this section for any fiscal year may be used for administrative purposes.

(c) Authorization of Appropriations.—In addition to any other amount authorized for the centers described in subsection (a), there is authorized to be appropriated $2,400,000 for fiscal year 1988, and such sums as may be necessary for such centers for fiscal years 1989 through 1993. Such funds shall remain available until expended.

(20 U.S.C. 4904)

SEC. 4005. NATIVE HAWAIIAN HIGHER EDUCATION DEMONSTRATION PROGRAM.

(a) Higher Education General Authority.—The Secretary shall make grants to the Kamehameha Schools/Bernice Pauahi Bishop Estate for a demonstration program to provide Higher Education fellowship assistance to Native Hawaiian students. The demonstration program under this section may include—

(1) full or partial fellowship support for Native Hawaiian students enrolled at an accredited two or four year degree granting institution of higher education with awards to be based on academic potential and financial need;

(2) counseling and support services for such students receiving fellowship assistance pursuant to subsection (a)(1) of this section;

(3) college preparation and guidance counseling at the secondary school level for students who may be eligible for fellowship assistance pursuant to subsection (a)(1) of this section;

(4) appropriate research and evaluation of the activities authorized by this section; and

(5) implementation of faculty development programs for the improvement and matriculation of Native Hawaiian students.

(b) Grants Authorized.—The Secretary shall make grants to the Kamehameha Schools/Bernice Pauahi Bishop Estate for a demonstration project of fellowship assistance for Native Hawaiian students in post-bachelor degree programs. Such project may include—

(1) full or partial fellowship support for Native Hawaiian students enrolled at an accredited post-bachelor degree granting institution of higher education, with priority given to professions in which Native Hawaiians are under-represented and

with awards to be based on academic potential and financial need;

(2) counseling and support services for such students receiving fellowship assistance pursuant to subsection (b)(1) of this section; and

(3) appropriate research and evaluation of the activities authorized by this section.

(c) SPECIAL CONDITION REQUIRED.—For the purpose of subsection (b) fellowship conditions shall be established whereby recipients obtain an enforceable contract obligation to provide their professional services, either during their fellowship or upon completion of post-bachelor degree program, to the Native Hawaiian community within the State of Hawaii.

(d) ADMINISTRATIVE COSTS.—No more than 7 percent of the funds appropriated to carry out the provisions of this section for any fiscal year may be used for administrative purposes.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) There are authorized to be appropriated $1,250,000 for fiscal year 1988 and for each succeeding fiscal year through 1993 for the purpose of funding the fellowship assistance demonstration project under subsection (a).

(2) There are authorized to be appropriated $750,000 for fiscal year 1988, and for each succeeding fiscal year through 1993, for the purpose of funding the fellowship assistance demonstration project provided under subsection (b).

(3) Funds appropriated under the authority of this subsection shall remain available until expended.

(20 U.S.C. 4905)

SEC. 4006. NATIVE HAWAIIAN GIFTED AND TALENTED DEMONSTRATION PROGRAM.

(a) GIFTED AND TALENTED DEMONSTRATION AUTHORITY.—

(1) The Secretary shall provide a grant to, or enter into a contract with, the University of Hawaii at Hilo for—

(A) the establishment of a Native Hawaiian Gifted and Talented Center at the University of Hawaii at Hilo, and

(B) for demonstration projects designed to—

(i) address the special needs of Native Hawaiian elementary and secondary school students who are gifted and talented students, and

(ii) provide those support services to their families that are needed to enable such students to benefit from the project.

Such grant or contract shall be subject to the availability of appropriated funds and, contingent on satisfactory performance by the grantee, shall be provided for a term of 3 years.

(2) After the term of the grant or contract provided, or entered into, under paragraph (1) has expired, the Secretary shall, for the purposes described in subparagraphs (A) and (B) of paragraph (1), provide a grant to, or enter into a contract with, the public, 4-year, fully accredited institution of higher education located in the State of Hawaii which has made the greatest contribution to Native Hawaiian students. Such grant or contract shall be provided on an annual basis. The grantees

shall be authorized to subcontract when appropriate, including with the Children's Television Workshop.

(b) USES OF FUNDS.—Demonstration projects funded under this section may include—

(1) the identification of the special needs of gifted and talented students, particularly at the elementary school level, with attention to—

(A) the emotional and psychosocial needs of these students, and

(B) the provision of those support services to their families that are needed to enable these students to benefit from the projects;

(2) the conduct of educational, psychosocial, and developmental activities which hold reasonable promise of resulting in substantial progress toward meeting the educational needs of such gifted and talented children, including, but not limited to, demonstrating and exploring the use of the Native Hawaiian language and exposure to Native Hawaiian cultural traditions;

(3) the use of public television in meeting the special educational needs of such gifted and talented children;

(4) leadership programs designed to replicate programs for such children throughout the State of Hawaii and to other Native American peoples, including the dissemination of information derived from the demonstration projects conducted under this section; and

(5) appropriate research, evaluation, and related activities pertaining to—

(A) the needs of such children, and

(B) the provision of those support services to their families that are needed to enable such children to benefit from the projects.

(c) INFORMATION PROVISION.—The Secretary shall facilitate the establishment of a national network of Native Hawaiian and American Indian Gifted and Talented Centers, and ensure that the information developed by these centers shall be readily available to the educational community at large.

(d) ADMINISTRATIVE COSTS.—No more than 7 percent of the amounts appropriated to carry out the provisions of this section for any fiscal year may be used for administrative purposes.

(e) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amount authorized for projects described in this section, there are authorized to be appropriated $1,000,000 for fiscal year 1988 and for each succeeding fiscal year through fiscal year 1993. Such sums shall remain available until expended.

(20 U.S.C. 4906)

SEC. 4007. NATIVE HAWAIIAN SPECIAL EDUCATION PROGRAM.

(a) SPECIAL EDUCATION AUTHORITY.—The Secretary shall make grants to, and enter into contracts with, the State of Hawaii, or Native Hawaiian Organizations, to operate projects to address the special education needs of Native Hawaiian students. Such projects assisted under this section may include—

(1) the identification of Native Hawaiian children who are learning disabled, mentally or physically handicapped, educable mentally retarded, or otherwise in need of special education services;

(2) the conduct of educational activities consistent with part B of the Education of the Handicapped Act[1] which hold reasonable promise of improving the provision of special education and related services to Native Hawaiian children who are identified as being handicapped; and

(3) appropriate research, evaluation and related activities pertaining to the needs of such children.

(b) ADMINISTRATIVE COSTS.—No more than 7 percent of the funds appropriated to carry out the provisions of this section for any fiscal year may be used for administrative purposes.

(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amount authorized for such project, there is authorized to be appropriated $1,500,000 for fiscal year 1988 and for each succeeding fiscal year through 1993. Such sums shall remain available until expended.

(20 U.S.C. 4907)

SEC. 4008. ADMINISTRATIVE PROVISIONS.

(a) APPLICATION REQUIRED.—No grant may be made under this title, nor any contract be entered into under this title, unless an application is submitted to the Secretary in such form, in such manner, and containing such information as the Secretary may determine necessary to carry out the provisions of this title.

(b) SPECIAL RULE.—Each application submitted under this title shall be accompanied by the comments of each local educational agency serving students who will participate in the project for which assistance is sought.

(20 U.S.C. 4908)

SEC. 4009. DEFINITIONS.

For purposes of this title—

(1) The term "Native Hawaiian" means any individual who is—

(A) a citizen of the United States,

(B) a resident of the State of Hawaii, and

(C) a descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by—

(i) genealogical records,

(ii) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

(iii) birth records of the State of Hawaii.

(2) The term "Secretary" means the Secretary of Education.

(3) The term "Native Hawaiian Educational Organization" means a private nonprofit organization that—

(A) serves the interests of Native Hawaiians,

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[1] Section 901 of Public Law 101–476 changed the short title of title VI of Public Law 91–230 from the "Education of the Handicapped Act" to the "Individuals with Disabilities Education Act". Such section further provided that any reference to the former shall be considered to be a reference to the "Individuals with Disabilities Education Act".

(B) has a demonstrated expertise in the education of Native Hawaiian youth, and

(C) has demonstrated expertise in research and program development.

(4) The term "Native Hawaiian Organization" means a private nonprofit organization that—

(A) serves the interests of Native Hawaiians, and

(B) is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or portion of programs) for the benefit of Native Hawaiians.

(5) The term "elementary school" has the same meaning given that term under section 1471(7)[1] of this Act.

(6) The term "local educational agency" has the same meaning given that term under section 1471(10)[2] of this Act.

(7) The term "secondary school" has the same meaning given that term under section 1471(7)[3] of this Act.

(20 U.S.C. 4909)

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[1] Probably should refer to section 1471(8) of the Elementary and Secondary Education Act of 1965.

[2] Probably should refer to section 1471(12) of the Elementary and Secondary Education Act of 1965.

[3] Probably should refer to section 1471(21) of the Elementary and Secondary Education Act of 1965.

PART VII—ADULT EDUCATION

Adult Education Act

TITLE III—ADULT EDUCATION PROGRAMS[1]

SEC. 301. SHORT TITLE.

This title may be cited as the "Adult Education Act".

(20 U.S.C. 1201 note) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

PART A—BASIC PROGRAM PROVISIONS

SEC. 311. STATEMENT OF PURPOSE.

It is the purpose of this title to assist the States to improve educational opportunities for adults who lack the level of literacy skills requisite to effective citizenship and productive employment, to expand and improve the current system for delivering adult education services including delivery of such services to educationally disadvantaged adults, and to encourage the establishment of adult education programs that will—

(1) enable these adults to acquire the basic educational skills necessary for literate functioning;

(2) provide these adults with sufficient basic education to enable them to benefit from job training and retraining programs and obtain and retain productive employment so that they might more fully enjoy the benefits and responsibilities of citizenship; and

(3) enable adults who so desire to continue their education to at least the level of completion of secondary school.

(20 U.S.C. 1201) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

SEC. 312. DEFINITIONS.

As used in this title—

(1) The term "adult" means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law, except that for the purpose of section 313(b), the term "adult" means an individual 16 years of age or older.

(2) The term "adult education" means services or instruction below the college level for adults—

(A) who are not enrolled in secondary school;

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[1] The Adult Education Act was enacted as Title III of the Elementary and Secondary Education Amendments of 1966. The following title was added by P.L. 100–297, title II pt. B, sec. 2102, 102 Stat. 302, the old title was deleted.

(B) who lack sufficient mastery of basic educational skills to enable them to function effectively in society or who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education;

(C) who are not currently required to be enrolled in school; and

(D) whose lack of mastery of basic skills results in an inability to speak, read, or write the English language which constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, and thus are in need of programs to help eliminate such inability and raise the level of education of such individuals with a view to making them less likely to become dependent on others.

(3) The term "educationally disadvantaged adult" means an adult who—

(A) demonstrates basic skills equivalent to or below that of students at the fifth grade level; or

(B) has been placed in the lowest or beginning level of an adult education program when that program does not use grade level equivalencies as a measure of students' basic skills.

(4) The term "community school program" is a program in which a public building, including but not limited to a public elementary or secondary school or a community or junior college, is used as a community center operated in conjunction with other groups in the community, community organizations, and local governmental agencies, to provide educational, recreational, cultural, and other related community services for the community which the center serves in accordance with the needs, interest, and concerns of that community.

(5) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, except that, if there is a separate board or other legally constituted local authority having administrative control and direction of adult education in public schools therein, such term means such other board or authority.

(6) The term "Secretary" means the Secretary of Education.

(7) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658), the Northern Mariana Islands, and the Virgin Islands.

(8) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and second-

ary schools, or, if there is a separate State agency or officer primarily responsible for supervision of adult education in public schools, then such agency or officer may be designated for the purpose of this title by the Governor or by State law. If no agency or officer qualifies under the preceding sentence, such term shall mean an appropriate agency or officer designated for the purposes of this title by the Governor.

(9) The term "academic education" means the theoretical, the liberal, the speculative, and classical subject matter found to compose the curriculum of the public secondary school.

(10) The term "institution of higher education" means any such institution as defined by section 481 of the Higher Education Act of 1965.

(11)[1] The term "individual of limited English proficiency" means an adult or out-of-school youth who has limited ability in speaking, reading, writing, or understanding the English language and—

(A)[1] whose native language is a language other than English; or

(B)[1] who lives in a family or community environment where a language other than English is the dominant language.

(12)[1] The term "out-of-school youth" means an individual who is under 16 years of age and beyond the age of compulsory school attendance under State law who has not completed high school or the equivalent.

(13)[1] The term "English literacy program" means a program of instruction designed to help limited English proficient adults, out-of-school youths, or both, achieve full competence in the English language.

(14)[1] The term "community-based organization" means a private nonprofit organization which is representative of a community or significant segments of a community and which provides education, vocational education or rehabilitation, job training, or internship services and programs and includes neighborhood groups and organizations, community action agencies, community development corporations, union-related organizations, employer-related organizations, tribal governments, and organizations serving Native Alaskans and Indians.

(15)[1] The term "private industry council" means the private industry council established under section 102 of the Job Training Partnership Act.[2]

(20 U.S.C. 1201a) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended May 11, 1989, P.L. 101–26, sec. 3, 103 Stat. 55; amended Nov. 16, 1990, P.L. 101–589, sec. 723, 104 Stat. 2913; amended July 25, 1991, P.L. 102–73, sec. 802(b)(1), 105 Stat. 361.

SEC. 313. AUTHORIZATION OF APPROPRIATIONS; ALLOTMENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the fiscal year 1991, $260,000,000 for the fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995 to carry out the provisions of this title (other than sections 371 and 372).

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[1] So in law. Margin is incorrect.

[2] So in law. See P.L. 100–297, sec. 2102, 102 Stat. 302.

(b) ALLOTMENT.—From the sums available for the purposes of section 311 for any fiscal year, the Secretary shall allot (1) $100,000 each to Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau, and (2) $250,000 to each of the other States. From the remainder of such sums the Secretary shall allot to each State an amount which bears the same ratio to such remainder as the number of adults who do not have a certificate of graduation from a school providing secondary education (or its equivalent) and who are not currently required to be enrolled in schools of such State bears to the number of such adults in all States.

(c) REALLOTMENT.—The portion of any State's allotment under subsection (b) for a fiscal year which the Secretary determines will not be required for the period such allotment is available for carrying out the State plan approved under this title shall be available for reallotment from time to time, on such dates during such period as the Secretary shall fix, to other States in proportion to the original allotments to such States under subsection (b) for such year, but with such proportionate amount for any of such other State being reduced to the extent it exceeds the sum which the Secretary estimates such State needs and will be able to use for such period for carrying out its State plan approved under this title, and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts are not so reduced. Any amount allotted to a State under this subsection during a year shall be deemed part of its allotment under subsection (b) for such year.

(d) RESERVATION OF FUNDS FOR NATIONAL PROGRAMS.—For any fiscal year, if the amount appropriated to carry out the purposes of this title exceeds $108,000,000, not more than $3,000,000 of such amount shall be reserved to carry out the programs described in part D, relating to national programs.

(20 U.S.C. 1201b) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended July 25, 1991, P.L. 102–73, secs. 301(a) and 802(b)(2), 105 Stat. 345 and 361.

PART B—STATE PROGRAMS

Subpart 1—Basic State Grants

SEC. 321. BASIC GRANTS.

From the sums allotted to States for this subpart pursuant to section 313, the Secretary is authorized to make grants to States to assist them in funding adult education programs, services, and activities carried out by eligible recipients to achieve the purposes of this title.

(20 U.S.C. 1203) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat 302.

SEC. 322. USE OF FUNDS; LOCAL APPLICATIONS.

(a) USE OF FUNDS.—

(1) Grants to States under this subpart shall be used in accordance with State plans (and amendments thereto) approved

under sections 341 and 351, to pay the Federal share of the cost of the establishment or expansion of adult education programs to be carried out by local educational agencies, correctional education agencies, community-based organizations, public or private nonprofit agencies, postsecondary educational institutions, and other institutions that have the ability to provide literacy services to adults and families. Each State educational agency receiving financial assistance under this subpart shall provide assurance that local educational agencies, public or private nonprofit agencies, community-based organizations, correctional education agencies, postsecondary educational institutions, and institutions which serve educationally disadvantaged adults will be provided direct and equitable access to all Federal funds provided under this subpart. Failure to provide the assurance required by the preceding sentence shall disqualify a State from receiving its allotment under this title. In determining which programs shall receive assistance under this paragraph, the State shall consider—

(A) the past effectiveness of applicants in providing services (especially with respect to recruitment and retention of educationally disadvantaged adults and the learning gains demonstrated by such adults);

(B) the degree to which the applicant will coordinate and utilize other literacy and social services available in the community; and

(C) the commitment of the applicant to serve individuals in the community that are most in need of literacy services.

(2) Grants to States provided under this section may also be used to carry out programs by a consortium which includes a for-profit agency, organization, or institution if such agency, organization, or institution can make a significant contribution to attaining the objectives of this Act. Whenever the establishment or expansion of programs includes a for-profit agency, organization, or institution, as part of a consortium, a contract with such agency, organization, or institution, for the establishment or expansion of such programs shall be entered into by the public or private nonprofit agency, institution, or organization.

(3)(A) Grants to States provided under this section shall also be used for competitive 2-year grants to public housing authorities for literacy programs and related activities. Any public housing authority that receives a grant under this subparagraph shall consult with local adult education providers in conducting programs and activities with assistance provided under the grant. Any grant provided under this subparagraph shall be referred to as a "Gateway Grant".

(B) The Secretary shall, not less often than every 2 years, evaluate any grants made under this paragraph and report the results of such evaluation to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(4) Such application shall contain such information as the State educational agency considers necessary, including a de-

scription of current programs, activities, and services receiving assistance from Federal, State, and local sources; the projected goals of the applicant with respect to participant recruitment, retention, and educational achievement and how the applicant will measure and report progress in meeting its goals; cooperative arrangements (including arrangements with business, industry, and volunteer literacy organizations as appropriate) that have been made to deliver services to adults as well as assurances that adult educational programs, services, or activities provided under this title are coordinated with and not duplicative of services, programs, or activities made available to adults under other Federal, State, and local programs, including the Job Training Partnership Act, the Carl D. Perkins Vocational and Applied Technology Education Act, the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Indian Education Act, the Higher Education Act of 1965, and the Domestic Volunteer Service Act.

(5) The State educational agency shall give preference to those applicants who have demonstrated or can demonstrate a capability to recruit and serve educationally disadvantaged adults, particularly in areas with a high proportion of adults who do not have a certificate of graduation from a school providing secondary education or its equivalent.

(b) LIMITATIONS ON USE OF FUNDS.—

(1) Not less than 10 percent of the funds paid to a State under subsection (a) shall be used for corrections education and education for other institutionalized individuals in accordance with subpart 2.

(2) Not more than 20 percent of a State's allotment shall be used for programs of equivalency for a certificate of graduation from a secondary school.

(20 U.S.C. 1203a) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended July 25, 1991, P.L. 102–73, sec. 301(b), 105 Stat. 345.

SEC. 323. LOCAL ADMINISTRATIVE COST LIMITS.

(a) Of the funds provided by the State agency to eligible recipients, at least 95 percent must be expended for provision of adult education instructional activities. The remainder shall be used for planning, administration, personnel development, and interagency coordination.

(b) In cases where the administrative cost limits under subsection (a) would be insufficient for adequate planning, administration, evaluation, and coordination of programs supported under this Act, the State agency shall negotiate with the local grant recipient in order to determine an adequate level of funds to be used for noninstructional purposes.

(20 U.S.C. 1203b) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat 302.

Subpart 2—Programs for Corrections Education and Education for Other Institutionalized Individuals

SEC. 326. PROGRAM AUTHORIZED.

[1]Funds set aside under section 322(b)(1) by a State shall be used for the cost of educational programs for criminal offenders in corrections institutions and for other institutionalized individuals, including—

(1) academic programs for—

(A) basic education with special emphasis on reading, writing, vocabulary, and arithmetic;

(B) special education programs as defined by State law;

(C) bilingual or English as a second language programs; and

(D) secondary school credit programs;

(2) vocational training programs;

(3) library development and library service programs;

(4) corrections education programs, training for teacher personnel specializing in corrections education, particularly courses in social education, basic skills instruction, and abnormal psychology;

(5) guidance and counseling programs;

(6) supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after their release; and

(7) cooperative programs with educational institutions, community-based organizations of demonstrated effectiveness, and the private sector, designed to provide education and training.

(b) As used in this section, the term—

(1) "criminal offender" means any individual who is charged with or convicted of any criminal offense; and

(2) "correctional institution" means any—

(A) prison,

(B) jail,

(C) reformatory,

(D) work farm,

(E) detention center, or

(F) halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

(20 U.S.C. 1204) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

Subpart 3—State Administrative Responsibilities

SEC. 331. STATE ADMINISTRATION.

(a) STATE AGENCY RESPONSIBILITIES.—Any State desiring to participate in the programs authorized by this title shall designate the State educational agency to be the sole State agency responsible for the administration and supervision of such programs. The responsibilities of the State agency shall include—

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[1] So in original. Probably should be preceded by subsection designation (a).

(1) the development, submission, and implementation of the State application and plan and any amendments thereto (pursuant to sections 342 and 351), and the State evaluation (pursuant to section 352);

(2) within 2 years of the enactment of the National Literacy Act of 1991, the development and implementation, in consultation with a widely representative group of appropriate experts, educators, and administrators, of indicators of program quality to be used to evaluate programs assisted under this title, as required by section 352, to determine whether such programs are effective, including whether such programs are successfully recruiting, retaining, and improving the literacy skills of the individuals served in such programs;

(3) consultation with the State advisory council established pursuant to section 332, and other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs funded under this title; and

(4) the assignment of such personnel as may be necessary for State administration of programs under this title.

(b) STATE IMPOSED REQUIREMENTS.—Whenever any State imposes any rule or policy relating to the administration and operation of programs funded by this title (including any rule or policy based on State interpretation of any Federal law, regulation, or guideline) the rule or policy shall be identified as a State imposed requirement.

(c) LIMITATION ON STATE ADMINISTRATIVE COSTS.—Effective for fiscal years beginning after September 30, 1990, a State educational agency may use no more than 5 percent of the State's grant or $50,000, whichever is greater, to pay the cost of its administration of the State's program.

(20 U.S.C. 1205) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended July 25, 1991, P.L. 102–73, sec. 301(c), 105 Stat. 346.

SEC. 332. STATE ADVISORY COUNCIL ON ADULT EDUCATION AND LITERACY.[1]

(a) REQUIREMENT.—(1) Any State may designate a body, or establish a new body if there is no suitable existing body, to act as a State advisory council on adult education and literacy, appointed by, and responsible to, the Governor. The membership of the State advisory council shall be broadly representative of citizens and groups within the State having an interest in adult education and literacy, and shall consist of—

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[1] Effective July 1, 1993, section 601(b)(2) of P.L. 102–367 added a new subsection (g) to this section as follows:

(2) ADULT EDUCATION ACT AMENDMENT.—Section 332(d) of the Adult Education Act (20 U.S.C. 1205a(d)) is amended by adding at the end the following new subsection:

"(g) DESIGNATION OF STATE HUMAN RESOURCE INVESTMENT COUNCIL UNDER THE JOB TRAINING PARTNERSHIP ACT.—(1) The requirements in this section shall be satisfied if a State designates the State human resource investment council established under title VII of the Job Training Partnership Act (in this subsection referred to as the 'State Council') to carry out the duties described in subsection (f).

"(2) Funds under this part may be allotted to the State Council to carry out such duties and the other duties of the State Council if the Governor and the head of the State agency responsible for carrying out programs under this Act agree to such an allotment.".

(i) representatives of public education;

(ii) representatives of public and private sector employment;

(iii) representatives of recognized State labor organizations;

(iv) representatives of private literacy organizations, voluntary literacy organizations, and community-based literacy organizations;

(v) the chief administrative officer of a State, or the designee of such officer;

(vi) representatives of—

(I) the State educational agency;

(II) the State job training agency;

(III) the State human services agency;

(IV) the State public assistance agency;

(V) the State library program; and

(VI) the State economic development agency;

(vii) officers of the State government whose agencies provide funding for literacy services or who may be designated by the Governor or the Chairperson of the council to serve whenever matters within the jurisdiction of the agency headed by such an officer are to be considered by the council; and

(viii) classroom teachers who have demonstrated outstanding results in teaching children or adults to read.

(2) A State which elects to designate or establish a State advisory council available for this subsection may use funds under this subpart for the purposes of this subsection.

(b) REPRESENTATION ON COUNCIL.—The State shall ensure that there is appropriate representation on the State advisory council of urban as well as rural areas, of women, persons with handicaps, and racial and ethnic minorities.

(c) CERTIFICATION.—The State shall certify the establishment and membership of the State advisory council to the Secretary prior to the beginning of any fiscal year in which the State desires to receive a grant under this title.

(d) PROCEDURES.—(1) Subject to paragraphs (2) and (3), the State advisory council shall determine its own procedures, staffing needs (subject to funding levels authorized by the chief executive officer of the State), and the number, time, place, and conduct of meetings.

(2) The State advisory council shall meet at least 4 times each year. At least 1 such meeting shall provide an opportunity for the general public to express views concerning adult education in the State.

(3) One member more than one-half of the members on the council shall constitute a quorum for the purpose of transmitting recommendations and proposals to the chief executive officer of the State, but a lesser number of members may constitute a quorum for other purposes.

(e) TERMS.—Members shall be appointed for fixed and staggered terms and may serve until their successors are appointed.

Any vacancy in the membership of the council shall be filled in the same manner as the original appointment. Any member of the council may be removed for cause in accordance with procedures established by the council.

(f) DUTIES.—Each State advisory council shall—

(1) meet with the State agencies responsible for literacy training during the planning year to advise on the development of a State plan for literacy and for adult education that fulfills the literacy and adult education needs of the State, especially with respect to the needs of the labor market, economic development goals, and the needs of the individuals in the State;

(2) advise the Governor, the State educational agency, and other State agencies concerning—

(A) the development and implementation of measurable State literacy and adult education goals consistent with section 342(c)(2), especially with respect to—

(i) improving levels of literacy in the State by ensuring that all appropriate State agencies have specific objectives and strategies for such goals in a comprehensive approach;

(ii) improving literacy programs in the State; and

(iii) fulfilling the long-term literacy goals of the State;

(B) the coordination and monitoring of State literacy training programs in order to progress toward the long-term literacy goals of the State;

(C) the improvement of the quality of literacy programs in the State by supporting the integration of services, staff training, and technology-based learning and the integration of resources of literacy programs conducted by various agencies of State government; and

(D) private sector initiatives that would improve adult education programs and literacy programs, especially through public-private partnerships;

(3) review and comment on the plan submitted pursuant to section 356(h) and submit such comments to the Secretary;

(4) measure progress on meeting the goals and objectives established pursuant to paragraph (2)(A);

(5) recommend model systems for implementing and coordinating State literacy programs for replication at the local level;

(6) develop reporting requirements, standards for outcomes, performance measures, and program effectiveness in State programs, that are consistent with those proposed by the Interagency Task Force on Literacy; and

(7)(A) approve the plan for evaluations required in section 352 and participate in the implementation and dissemination of such evaluations, (B) advise the Governor, the State legislature, and the general public of the State of the findings of such evaluations, and (C) include in any report of such evaluations its comments and recommendations.

(20 U.S.C. 1205a) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended July 25, 1991, P.L. 102–73, sec. 301(d), 105 Stat. 346; amended September 7, 1992, P.L. 102–367, sec. 601(b)(2), 106 Stat. 1103.

Subpart 4—Planning and Applications

SEC. 341. STATE PLAN AND APPLICATION.

(a) REQUIREMENT.—Any State desiring to receive funds under this title shall submit to the Secretary, during the fiscal year 1989 and during each fourth fiscal year thereafter, a State plan and application for adult education (in one document) for the four fiscal years succeeding each fiscal year in which the State plan and application are submitted.

(b) PROCEDURE FOR SUBMISSION AND CONSIDERATION.—Each State plan and application shall be submitted to the Secretary by July 1 preceding the beginning of the first fiscal year for which the plan is in effect. The Secretary shall approve, within 60 days, each such plan and application which is formulated in accordance with sections 342 and 343 and which meets the requirements of such sections, and shall not finally disapprove a State plan except after giving reasonable notice and an opportunity for a hearing to the State agency.

(c) GEPA PROVISION.—Such document shall be considered to be the general application required to be submitted by the State for funds received under this Act for the purpose of the provisions of section 435 of the General Education Provisions Act.

(20 U.S.C. 1206) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

SEC. 342. FOUR-YEAR STATE PLAN.

(a) PROCEDURES REQUIRED IN FORMULATING STATE PLAN.—(1) In formulating the State plan, the State agency shall meet with and utilize the State advisory council, if established pursuant to section 332 of this title.

(2) The State agency shall conduct public hearings in the State, after appropriate and sufficient notice, for the purpose of affording all segments of the public, including groups serving educationally disadvantaged adults, and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan. A summary of such recommendations and the State agency's response shall be included with the State plan submitted to the Secretary.

(3)(A) Not less than 60 days before submission of the State plan to the Secretary under section 341, the State agency shall simultaneously submit the proposed State plan to (i) the State Board or agency for vocational education, (ii) the State Job Training Coordinating Council under the Job Training Partnership Act, and (iii) the State Board responsible for postsecondary education for review and comment. Such comments (to the extent such comments are received in a timely fashion) and the State's response shall be included with the State plan submitted to the Secretary. The Secretary shall consider such comments in reviewing such plan.

(B) Not less than 60 days before the submission of the State plan to the Secretary, such plan shall be submitted to the State advisory council (if such a council exists). Should the State advisory council find that it has substantial disagreement with the final State plan, the Council may file timely objections with the State agency. The State agency shall respond to all substantial objections of the State advisory council in submitting such plan to the Secretary. The Secretary shall consider such comments in reviewing the State plan.

(b) REQUIRED ASSESSMENTS.—In developing the 4-year State plan, each State shall (1) make a thorough assessment of (A) the needs of adults, including educationally disadvantaged adults, eligible to be served as well as adults proposed to be served and those served and (B) the capability of existing programs and institutions to meet those needs, and (2) state the changes and improvements required in adult education to fulfill the purposes of this title, and the options for implementing these changes and improvements.

(c) COMPONENTS OF STATE PLAN.—Consistent with the assessments described in subsection (b) each such plan shall—

(1) describe and provide for the fulfillment of the literacy needs of individuals in the State;

(2) set forth measurable goals for improving literacy levels, retention in literacy programs, and long-term learning gains of individuals in the State and describe a comprehensive approach for achieving such goals, including the development of indicators of program quality as required by section 331(a)(2);

(3) describe the curriculum, equipment, and instruments that are being used by instruction personnel and indicate how current these elements are;

(4) describe the means by which the delivery of adult education services will be significantly expanded (including efforts to reach typically underserved groups such as educationally disadvantaged adults, individuals with limited English proficiency and individuals with handicaps) through coordination by agencies, institutions, and organizations including the public school system, businesses, labor unions, libraries, institutions of higher education, public health authorities, employment or training programs, antipoverty programs, organizations providing assistance to the homeless, and community and voluntary organizations;

(5) describe the means by which representatives of the public and private sector are involved in the development and implementation of the plan, especially in the expansion of the delivery of adult education services by cooperation and collaboration with those public and private agencies, institutions, and organizations;

(6) describe specialized efforts to attract and assist meaningful participation in adult education programs through flexible course schedules, provision of auxiliary aids and services, convenient locations, adequate transportation, and meeting child care needs;

(7) provide for the needs of persons with limited English proficiency (as defined in section 7004(a)[1] of title VII of the El-

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[1] This reference probably should be to "7003(a)".

ementary and Secondary Education Act of 1965[1] or no English proficiency by providing adequate appropriate language assistance to the extent necessary to all such persons so they may progress effectively through adult education programs;

(8) describe how the particular educational needs of adult immigrants, the incarcerated, persons with handicaps, the chronically unemployed, the homeless, the disadvantaged, and minorities will be addressed;

(9) describe the progress the State has made in achieving the goals set forth in each State plan subsequent to the initial State plan;

(10) set forth the criteria the State agency will use in approving applications by eligible recipients and allocating funds made available under this title to such recipients;

(11) describe the methods proposed for the joint planning and coordination of programs carried out under this title with those conducted under applicable Federal and State programs, including the Carl D. Perkins Vocational Education Act of 1963, the Job Training Partnership Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act,[2] the Immigration Reform and Control Act of 1986, the Higher Education Act of 1965, and the Domestic Volunteer Service Act, to assure maximum use of funds under these Acts and to avoid duplication of services;

(12) describe the steps taken to utilize volunteers, particularly volunteers assigned to the Literacy Corps established under the Domestic Volunteer Service Act and volunteers trained in programs carried out by section 382 of this title, but only to the extent that such volunteers supplement and do not supplant salaried employees;

(13) describe the measures to be taken to ensure that adult education programs, services, and activities assisted under this title will take into account the findings or program reviews and evaluations carried out pursuant to section 352;

(14) report the amount of administrative funds spent on program improvements; and

(15) contain assurances that financial assistance provided pursuant to this title shall be used to assist and expand existing programs and to develop new programs for adults whose lack of basic skills—

(A) renders them unemployable;

(B) keeps them, whether employed or unemployed, from functioning independently in society; and

(C) severely reduces their ability to have a positive effect on the literacy of their children.

(d) LIMITED ENGLISH PROFICIENCY RULE.—Programs conducted under subsection (c)(6) shall be designed to teach English to limited English proficient adults and, as appropriate, to allow such adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible. Such programs may provide instruction in the native language, to the extent necessary, or may provide instruction exclusively in English, and shall be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

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[1] So in original. Probably should be followed by a closing parenthesis.

[2] Section 901 of Public Law 101–476 changed the short title of title VI of Public Law 91–230 from the "Education of the Handicapped Act" to the "Individuals with Disabilities Education Act". Such section further provided that any reference to the former shall be considered to be a reference to the "Individuals with Disabilities Education Act".

(20 U.S.C. 1206a) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended July 25, 1991, P.L. 102–73, sec. 301(e), 105 Stat. 348.

SEC. 343. STATE APPLICATIONS.

The State application submitted pursuant to section 341 shall provide assurances—

(1) that the State will provide such methods of administration as are necessary for the proper and efficient administration of this title;

(2) that Federal funds made available under this title will be so used as to supplement the amount of State and local funds available for uses specified in this title, and in no case to supplant such State and local funds;

(3) that the programs, services, and activities funded in accordance with the uses specified in section 322 are designed to expand or improve the quality of adult education programs including programs for educationally disadvantaged adults, to initiate new programs of high quality, or where necessary, to maintain programs;

(4) that the State will provide such fiscal control and fundings accounting procedures as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to eligible recipients under this title); and

(5) that the State has instituted policies and procedures to ensure that copies of the State plan and all statements of general policy, rules, regulations, and procedures will be made available to the public.

(20 U.S.C. 1206b) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

Subpart 5—Evaluation and State Plan Amendments

SEC. 351. STATE PLAN AMENDMENTS.

(a) TIMELY SUBMISSION.—When changes are necessary in a State plan, the State shall submit amendments to its plan by July 1 preceding the fiscal year of operation to which the amendments apply.

(b) CONSIDERATION BY SECRETARY.—The Secretary shall approve, within 60 days of submission, State plan amendments which meet the requirements of this section, unless such amendments propose changes that are inconsistent with the requirements and purposes of this title. The Secretary shall not finally disapprove such amendments except after giving reasonable notice and an opportunity for hearing to the State agency.

(c) TRANSITION RULE.—Upon a written request from a State, the Secretary shall approve an extension of 1 year, from June 30, 1988, to June 30, 1989, for the revision of any plan already approved under this section for the period July 1, 1985, through June 30, 1988.

(20 U.S.C. 1207) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

SEC. 352. EVALUATION.

In order to assist grant recipients receiving funds under this title to plan and operate the best possible programs of adult education, each State agency during the 4-year period of the State plan shall—

(1) annually submit to the Secretary and make public within the State data with respect to grant recipients, including—

(A) the number and percentage of local educational agencies, community-based organizations, volunteer groups, and other organizations that are grant recipients; and

(B) results of the evaluations carried out as required by paragraph (2) in the year preceding the year for which the data is submitted;

(2) evaluate 20 percent of the grant recipients each year so that at the end of such period 80 percent of all grant recipients shall have been evaluated once and such evaluations shall consider, at a minimum—

(A) the projected goals of the grant recipient as described in its application pursuant to section 322(a)(3);

(B) the planning and content of the program;

(C) the curriculum, instructional materials, equipment, and qualifications of all personnel;

(D) the success of the grant recipient in meeting the State's indicators of program quality after such indicators are developed as required by section 331(a)(2); and

(E) other factors determined to affect program operation;

(3) gather and analyze data (including standardized test data) to determine the extent to which the adult programs are achieving the goals set forth in the plan including the goal of serving educationally disadvantaged adults, and the extent to which grant recipients have improved their capacity to achieve the purposes of this title as set forth in section 311.

(20 U.S.C. 1207a) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended July 25, 1991, P.L. 102–73, sec. 301(f), 105 Stat. 349.

Subpart 6—Demonstration Projects

SEC. 353. SPECIAL EXPERIMENTAL DEMONSTRATION PROJECTS AND TEACHER TRAINING.

(a) USE OF FUNDS.—Of the funds allotted to a State under section 313 for a fiscal year, not less than 15 percent shall be used for—

(1) special projects which will be carried out in furtherance of the purposes of this title, which will be coordinated with other programs funded under this title and which—

(A) involve the use of innovative methods (including methods for educating persons with handicaps, the homeless, and persons of limited English proficiency), systems, materials, or programs which may have national significance or will be of special value in promoting effective programs under this title, or

(B) involve programs of adult education, including education for persons with handicaps, the homeless, and persons of limited English proficiency, which are part of community school programs, carried out in cooperation with other Federal, State, or local programs which have unusual promise in promoting a comprehensive or coordinated approach to the problems of persons with educational deficiencies;

(2) training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of this title; and

(3) training professional teachers, volunteers, and administrators, with particular emphasis on—

(A) training—

(i) full-time professional adult educators;

(ii) minority adult educators;

(iii) educators of adults with limited English proficiency; and

(B) training teachers to recognize and more effectively serve illiterate individuals with learning disabilities and individuals who have a reading ability below the fifth grade level.

(b) SPECIAL RULE.—At least ⅔ of the 15 percent reserved pursuant to subsection (a) shall be used to carry out the provisions of paragraphs (2) and (3) of subsection (a).

(20 U.S.C. 1208) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended July 25, 1991, P.L. 102–73, sec. 301(g), 105 Stat. 349.

Subpart 7—State Literacy Resource Centers

SEC. 356. STATE LITERACY RESOURCE CENTERS.

(a) PURPOSE.—It is the purpose of this section to assist State and local public and private nonprofit efforts to eliminate illiteracy through a program of State literacy resource center grants to—

(1) stimulate the coordination of literacy services,

(2) enhance the capacity of State and local organizations to provide literacy services, and

(3) serve as a reciprocal link between the National Institute for Literacy and service providers for the purpose of sharing information, data, research, and expertise and literacy resources.

(b) ESTABLISHMENT.—From amounts appropriated pursuant to subsection (k), the Secretary is authorized to make grants for purposes of establishing a network of State or regional adult literacy resource centers.

(c) ALLOTMENT.—(1) From sums available for purposes of making grants under this section for any fiscal year, the Secretary shall allot to each State having an approved application under subsection (h) an amount that bears the same ratio to such sums as the amount allotted to such State under section 313(b) for the purpose of making grants under section 321 bears to the aggregate amount allotted to all States under such section for such purpose.

(2) The chief executive officer of each State that receives its allotment under this section shall contract on a competitive basis with the State educational agency, 1 or more local educational agencies, a State office on literacy, a volunteer organization, a community-based organization, institution of higher education, or other nonprofit entity to operate a State literacy resource center. No applicant participating in a competition pursuant to the preceding sentence shall participate in the review of its own application.

(d) USE OF FUNDS.—Funds provided to each State under subsection (c)(1) to carry out this section shall be used to conduct activities to—

(1) improve and promote the diffusion and adoption of state-of-the-art teaching methods, technologies and program evaluations;

(2) develop innovative approaches to the coordination of literacy services within and among States and with the Federal Government;

(3) assist public and private agencies in coordinating the delivery of literacy services;

(4) encourage government and industry partnerships, including partnerships with small businesses, private nonprofit organizations, and community-based organizations;

(5) encourage innovation and experimentation in literacy activities that will enhance the delivery of literacy services and address emerging problems;

(6) provide technical and policy assistance to State and local governments and service providers to improve literacy policy and programs and access to such programs;

(7) provide training and technical assistance to literacy instructors in reading instruction and in—

(A) selecting and making the most effective use of state-of-the-art methodologies, instructional materials, and technologies such as—

(i) computer assisted instruction;

(ii) video tapes;

(iii) interactive systems; and

(iv) data link systems; or

(B) assessing learning style, screening for learning disabilities, and providing individualized remedial reading instruction; or

(8) encourage and facilitate the training of full-time professional adult educators.

(e) ALTERNATIVE USES OF EQUIPMENT.—Equipment purchases pursuant to this section, when not being used to carry out the provisions of this section, may be used for other instructional purposes if—

(1) the acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under this section;

(2) the equipment is used after regular program hours or on weekends; and

(3) such other use is—

(A) incidental to the use of the equipment under this section;

(B) does not interfere with the use of the equipment under this section; and

(C) does not add to the cost of using the equipment under this section.

(f) LIMITATION.—Not more than 10 percent of amounts received under any grant received under this section shall be used to purchase computer hardware or software.

(g) SPECIAL RULE.—(1) Each State receiving funds pursuant to this section may not use more than 5 percent of such funds to establish a State advisory council on adult education and literacy (in this section referred to as the "State council") pursuant to section 332.

(2) Each State receiving funds pursuant to this section may use such funds to support an established State council to the extent that such State council meets the requirements of section 332.

(3) Each State receiving funds pursuant to this paragraph to establish or support a State council pursuant to section 332 shall provide matching funds on a dollar-for-dollar basis.

(h) APPLICATIONS.—Each State or group of States, as appropriate, that desires to receive a grant under this section for a regional adult literacy resource center, a State adult literacy resource center, or both shall submit to the Secretary an application that has been reviewed and commented on by the State council, where appropriate, and that describes how the State or group of States will—

(1) develop a literacy resource center or expand an existing literacy resource center;

(2) provide services and activities with the assistance provided under this section;

(3) assure access to services of the center for the maximum participation of all public and private programs and organizations providing or seeking to provide basic skills instruction, including local educational agencies, agencies responsible for corrections education, service delivery areas under the Job Training Partnership Act, welfare agencies, labor organizations, businesses, volunteer groups, and community-based organizations;

(4) address the measurable goals for improving literacy levels as set forth in the plan submitted pursuant to section 342; and

(5) develop procedures for the coordination of literacy activities for statewide and local literacy efforts conducted by public and private organizations, and for enhancing the systems of service delivery.

(i) PAYMENTS; FEDERAL SHARE.—(1) The Secretary shall pay to each State having an application approved pursuant to subsection (h) the Federal share of the cost of the activities described in the application.

(2) The Federal share—

(A) for each of the first 2 fiscal years in which the State receives funds under this section shall not exceed 80 percent;

(B) for each of the third and fourth fiscal years in which the State receives funds under this section shall not exceed 70 percent; and

(C) for the fifth and each succeeding fiscal year in which the State receives funds under this section shall not exceed 60 percent.

(3) The non-Federal share of payments under this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(j) REGIONAL CENTERS.—(1) A group of States may enter into an interstate agreement to develop and operate a regional adult literacy resource center for purposes of receiving assistance under this section if the States determine that a regional approach is more appropriate for their situation.

(2) Any State that receives assistance under this section as part of a regional center shall only be required to provide under subsection (i) 50 percent of the funds such State would otherwise be required to provide under such subsection.

(3) In any fiscal year in which the amount a State will receive under this section is less than $100,000, the Secretary may designate the State to receive assistance under this section only as part of a regional center.

(4) The provisions of paragraph (3) shall not apply to any State that can demonstrate to the Secretary that the total amount of Federal, State, local and private funds expended to carry out the purposes of this section would equal or exceed $100,000.

(5) In any fiscal year in which paragraph (2) applies, the Secretary may allow certain States that receive assistance as part of a regional center to reserve a portion of such assistance for a State adult literacy resource center pursuant to this section.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section $25,000,000 for each of the fiscal years 1992 and 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.

(20 U.S.C. 1208aa) Enacted July 25, 1991, P.L. 102–73, sec. 103(2), 105 Stat. 339.

Subpart 8—Federal Share; Federal Administrative Responsibilities

SEC. 361. PAYMENTS.

(a) FEDERAL SHARE.—The Federal share of expenditures to carry out a State plan shall be paid from a State's allotment available for grants to that State. The Federal share shall be—

(1) 90 percent of the cost of carrying out the State's programs for fiscal year 1988;

(2) 85 percent of such cost for fiscal year 1990;

(3) 80 percent of such cost for fiscal year 1991; and

(4) 75 percent of such cost for fiscal year 1992 and for each fiscal year thereafter,

except that with respect to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau, the Federal share of such cost shall be 100 percent.

(b) Maintenance of Effort.—(1) No payment may be made to any State from its allotment for any fiscal year unless the Secretary finds that the fiscal effort per student or the amount available for expenditure by such State for adult education from non-Federal sources for the second preceding fiscal year was not less than such fiscal effort per student or such amount available for expenditure for such purposes from such sources during the third preceding fiscal year.

(2) The Secretary may waive the requirements of this subsection for 1 fiscal year only, upon making a determination that such waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the applicant to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources.

(c) Federal Responsibility.—Within 1 year after the enactment of the National Literacy Act of 1991, the Secretary, in consultation with appropriate experts, educators, and administrators, shall develop indicators of program quality that may be used by State and local programs receiving assistance under this title as models by which to judge the success of such programs, including success in recruitment and retention of students and improvement in the literacy skills of students. Such indicators shall take into account different conditions under which programs operate and shall be modified as better means of assessing program quality are developed.

(20 U.S.C. 1209) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended July 25, 1991, P.L. 102–73, secs. 302(h) and 802(b)(2), 105 Stat. 350 and 361.

PART C—WORKPLACE LITERACY AND ENGLISH LITERACY GRANTS

SEC. 371. BUSINESS, INDUSTRY, LABOR, AND EDUCATION PARTNERSHIPS FOR WORKPLACE LITERACY.

(a) Grants for Exemplary Demonstration Partnerships for Workplace Literacy.—(1) Subject to subsection (b), the Secretary, in consultation with the Secretary of Labor and the Administrator of the Small Business Administration, shall make demonstration grants to exemplary education partnerships for workplace literacy to pay the Federal share of the cost of adult education programs which teach literacy skills needed in the workplace through partnerships between—

(A) business, industry, labor organizations, or private industry councils; and

(B) State educational agencies, local educational agencies, institutions of higher education, or schools (including employment and training agencies or community-based organizations).

(2) Grants under paragraph (1) may be used—

(A) to fund 70 percent of the cost of programs which meet the requirements of paragraph (3); and

(B) for administrative costs incurred by State educational agencies, local educational agencies, and other entities described in paragraph (1) that receive grants under this subsection in establishing programs funded under subparagraph (A).

(3) Programs funded under paragraph (2)(A) shall be designed to improve the productivity of the workforce through improvement of literacy skills needed in the workplace by—

(A) providing adult literacy and other basic skills services and activities;

(B) providing adult secondary education services and activities which may lead to the completion of a high school diploma or its equivalent;

(C) meeting the literacy needs of adults with limited English proficiency;

(D) upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(E) improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(F) providing education counseling, transportation, and nonworking hours child care services to adult workers while they participate in a program funded under paragraph (2)(A).

(4) An application to receive funding for a program out of a grant made to a partnership under this subsection shall—

(A) be submitted jointly by—

(i) a business, industry, or labor organization, or private industry council; and

(ii) a State educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or community-based organization);

(B) set forth the respective roles of each member of the partnership;

(C) contain such additional information as the Secretary may require, including evidence of the applicant's experience in providing literacy services to working adults;

(D) describe the plan for carrying out the requirements of paragraph (3); and

(E) provide assurances that the applicant will use the funds to supplement and not supplant funds otherwise available for the purpose of this section.

(5) In awarding grants under this section, the Secretary shall give priority to applications from partnerships that include small businesses.

(6) The Secretary is authorized to award grants under this section for a period not to exceed 3 years.

(b) GRANTS TO STATES.—(1) Whenever in any fiscal year, appropriations under subsection (e) are equal to or exceed $50,000,000, the Secretary shall make grants to States which have State plans approved by the Secretary under section 342 to pay the Federal share of the cost of adult education programs which teach literacy skills needed in the workplace through partnerships between—

(A) business, industry, or labor organizations, or private industry councils; and

(B) State educational agencies, local educational agencies, institutions of higher education, or schools (including employment and training agencies or community-based organizations).

(2) Grants under paragraph (1) may be used—

(A) to fund 70 percent of the cost of programs which meet the requirements of paragraph (4);

(B) for administrative costs incurred by State educational agencies, local educational agencies, and other entities described in paragraph (1) that receive grants under this subsection in establishing programs funded under subparagraph (A); and

(C) for costs incurred by State educational agencies in obtaining evaluations described in paragraph (3)(A)(iii).

(3) A State shall be eligible to receive its allotment under paragraph (7)(B) if it—

(A) includes in a State plan submitted to the Secretary under section 342 a description of—

(i) the requirements for State approval of funding of a program;

(ii) the procedures under which applications for such funding may be submitted; and

(iii) the method by which the State shall obtain annual third-party evaluation of student achievement in, and overall effectiveness of services provided by, all programs which receive funding out of a grant made to the State under this section; and

(B) satisfies the requirements of section 306(a).

(4) The program requirements set forth in subsection (a)(3) shall apply to the program authorized by this subsection.

(5) An application to receive funding for a program from a grant made to a State under paragraph (1) shall contain the same information required in subparagraphs (A) through (E) of subsection (a)(4).

(6) If a State is not eligible for a grant under paragraph (1) of this subsection, the Secretary shall use the State's allotment under paragraph (7) to make direct grants to applicants in that State who are qualified to teach literacy skills needed in the workplace.

(7)(A) The Federal share of expenditures for programs in a State funded under this subsection shall be paid from a State's allotment under this paragraph.

(B)[1] From the sum appropriated for each fiscal year under subsection (c) for any fiscal year in which appropriations equal or exceed $50,000,000, the Secretary shall allot to each State (as defined in section 312(7)) an amount proportionate to the amount such State receives under section 313.

(C) At the end of each fiscal year, the portion of any State's allotment for that fiscal year which—

(i) exceeds 10 percent of the total allotment for the State under paragraph (2) for the fiscal year; and

(ii) remains unobligated;

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[1] An amendment to this subparagraph made by section 802(b)(1) of P.L. 102–73 (short title is "National Literacy Act of 1991") was unexecutable. Section 202(2)(C) of 102–73 struck out old (B) and added a new (B).

shall be reallocated among the other States in the same proportion as each State's allocation for such fiscal year under paragraph (2).

(c) GRANT FOR NATIONAL WORKFORCE LITERACY STRATEGIES.—(1) In any fiscal year in which amounts appropriated pursuant to the authorization contained in subsection (e) equal or exceed $25,000,000, the Secretary shall reserve not more than $5,000,000 to establish a program of grants to facilitate the design and implementation of national strategies to assist unions, unions in collaboration with programs eligible for assistance under this Act and businesses, and small- and medium-sized businesses to effectively provide literacy and basic skills training to workers.

(2) Grants awarded under this subsection shall pay the Federal share of the cost of programs to establish large-scale national strategies in workforce literacy, which may include the following activities:

(A) Basic skills training that is—

(i) cost-effective;

(ii) needed by employees; and

(iii) required by employers to establish a trainable workforce that can take advantage of further job specific training and advance the productivity of the labor force on an individual, industry, or national level.

(B) Specific program offerings, which may include—

(i) English as a second language instruction;

(ii) communications skill building;

(iii) interpersonal skill building;

(iv) reading and writing skill building; and

(v) computation and problem solving.

(C) Appropriate assessments of the literacy and basic skills needs of individual workers and the skill levels required by business.

(D) Cooperative arrangements with other organizations involved in providing literacy and basic skills training, including adult education organizations, vocational education organizations, community and junior colleges, community-based organizations, State level agencies, and private industry councils.

(E) The establishment as appropriate of technology-based learning environments, such as computer-based learning centers.

(3) Any partnership described in subsection (a)(1) that desires to receive a grant under this subsection shall submit a proposal to the Secretary. The proposal shall contain a plan specifying a strategy for designing and implementing workforce literacy and basic skills training for workers, and justifying the national, statewide, or industry-wide importance of this strategy. The proposal shall include—

(A) a demonstration of need for literacy and basic skills training;

(B) a description of the business or industry for which the strategy is to be established;

(C) a statement of specific, measurable goals and participant outcomes;

(D) a strategy for achieving the goals, including a description of the process to identify literacy and basic skills required by employers and the skills of individual workers, and a description of the specific services to be provided; and

(E) a description of the costs of the activities to be undertaken.

(4) The Secretary shall develop a formal process for the submission of proposals and publish an announcement in the Federal Register with respect to that process and the availability of grants under this subsection.

(5) The Federal share of the cost of a program assisted under this subsection shall not exceed 70 percent.

(6) The Secretary shall give priority for grants under this subsection to proposals to carry out activities described in paragraph (2)(D).

(7) In awarding grants under this subsection, the Secretary may consider geographic factors, such as rural and urban areas and national distribution.

(8) Of the grants awarded under this subsection each year, not less than 5 shall each be for an amount that is not less than $500,000.

(d) EVALUATION.—The Secretary shall reserve not more than 2 percent of any amount appropriated pursuant to the authorization contained in subsection (e) for the purpose of carrying out an independent evaluation of the effectiveness of programs assisted under this section in improving the literacy and basic skills of workers and the productivity of employees, including potential for the replicability or adaption of such programs.

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated for purposes of carrying out this section such sums as may be necessary for the fiscal year 1991, $60,000,000 for the fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.

(2) No funds may be appropriated under paragraph (1) of this subsection for any fiscal year unless the appropriation for this Act (other than this part) for that year is equal to or greater than $110,000,000.

(3) Amounts appropriated under this subsection shall remain available until expended.

(20 U.S.C. 1211) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended July 25, 1991, P.L. 102–73, sec. 202, 105 Stat. 342.

SEC. 372. ENGLISH LITERACY GRANTS.

(a) GRANTS TO STATES.—(1) The Secretary may make grants to States which have State plans approved by the Secretary under section 342 for the establishment, operation, and improvement of English literacy programs for individuals of limited English proficiency. Such grants may provide for support services for program participants, including child care and transportation costs.

(2) A State shall be eligible to receive a grant under paragraph (1) if the State includes in a State plan submitted to the Secretary under section 342 a description of—

(A) the number of individuals of limited English proficiency in the State who need or could benefit from programs assisted under this chapter; [1]

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[1] So in original. Probably should read "this part;".

(B) the activities which would be undertaken under the grant and the manner in which such activities will promote English literacy and enable individuals in the State to participate fully in national life;

(C) how the activities described in subparagraph (B) will serve individuals of limited English proficiency, including the qualifications and training of personnel who will participate in the proposed activities;

(D) the resources necessary to develop and operate the proposed activities and the resources to be provided by the State; and

(E) the specific goals of the proposed activities and how achievement of these goals will be measured.

(3) The Secretary may terminate a grant only if the Secretary determines that—

(A) the State has not made substantial progress in achieving the specific educational goals set out in the application; or

(B) there is no longer a need in the State for the activities funded by the grant.

(b) SET-ASIDE FOR COMMUNITY-BASED ORGANIZATIONS.—A State that is awarded a grant under subsection (a) shall use not less than 50 percent of funds awarded under the grant to fund programs operated by community-based organizations with the demonstrated capability to administer English proficiency programs.

(c) REPORT.—A State that is awarded a grant under subsection (a) shall submit to the Secretary a report describing the activities funded under the grant for each fiscal year covered by the grant.

(d) DEMONSTRATION PROGRAM.—The Secretary, subject to the availability of funds appropriated pursuant to this section, shall directly, and through grants and contracts with public and private nonprofit agencies, institutions, and organizations, carry out a program—

(1) through the Adult Education Division to develop innovative approaches and methods of literacy education for individuals of limited English proficiency utilizing new instructional methods and technologies; and

(2) to designate the Center for Applied Linguistics of the Office of Educational Research and Improvement as a national clearinghouse on literacy education for individuals of limited English proficiency to collect and disseminate information concerning effective approaches or methods, including coordination with employment training and other education programs.

(e) EVALUATION AND AUDIT.—The Secretary shall evaluate the effectiveness of programs conducted under this section. Programs funded under this section shall be audited in accordance with chapter 75 of title 31, United States Code.

(f) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $25,000,000 for the fiscal year 1988, $26,300,000 for the fiscal year 1989, $27,600,000 for the fiscal year 1990, $29,000,000 for the fiscal year 1991, $30,500,000 for the fiscal year 1992, and $32,000,000 for the fiscal year 1993 to carry out this section.

(2) Funds appropriated pursuant to this section shall remain available until expended.

(3) Funds appropriated under this subsection may be combined with other funds made available for the State by the Federal Government for literacy training for individuals with limited English proficiency.

(4) Not more than 10 percent of funds available under this section may be used to carry out the provisions of subsection (d).

(5) Not more than 5 percent of funds available under this section may be used for State administration, technical assistance, and training.

(20 U.S.C. 1211a) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

SEC. 373.[1] EDUCATION PROGRAMS FOR COMMERCIAL DRIVERS.

(a) PROGRAM AUTHORIZED.—The Secretary is authorized to make grants on a competitive basis to pay the Federal share of the costs of establishing and operating adult education programs which increase the literacy skills of eligible commercial drivers so that such drivers may successfully complete the knowledge test requirements under the Commercial Motor Vehicle Safety Act of 1986.

(b) FEDERAL SHARE.—The Federal share of the costs of the adult education programs authorized under subsection (a) shall be 50 percent. Nothing in this subsection shall be construed to require States to meet the non-Federal share from State funds.

(c) ELIGIBLE ENTITIES.—Entities eligible to receive a grant under this section include—

(1) private employers employing commercial drivers in partnership with agencies, colleges, or universities described in paragraph (2);

(2) local educational agencies, State educational agencies, colleges, universities, or community colleges;

(3) approved apprentice training programs; and

(4) labor organizations, the memberships of which include commercial drivers.

(d) REFERRAL PROGRAM.—Grantees shall refer to appropriate adult education programs as authorized under this Act individuals who are identified as having literacy skill problems other than or beyond those which prevent them from successfully completing the knowledge test requirements under the Commercial Motor Vehicle Driver[2] Safety Act of 1986.

(e) DEFINITIONS.—For purposes of this section:

(1) The term "approved apprentice training programs" has the meaning given such term in the National Apprenticeship Act of 1937.

(2) The term "eligible commercial driver" means a driver licensed prior to the requirements of the Commercial Motor Vehicle Safety Act of 1986.

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[1] This section added by section 7 of P.L. 102–26 the Act entitled "Higher Education Technical Amendments of 1991". Section 401(a) of P.L. 102–73 adds a new section 373 to the Adult Education Act. Section 401(b) of 102–73 provides that the amendment made by subsection (a) shall not take effect if the Higher Education Amendments of 1991 are enacted before the enactment of this Act. This reference to P.L. 102–26 probably should have been to the Higher Education Technical Amendments of 1991.

[2] So in original. The word "Driver" probably should not appear.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $3,000,000 for each of fiscal years 1991, 1992, and 1993.

(20 U.S.C. 1211b) Enacted April 9, 1991, P.L. 102–26, sec. 7, 105 Stat. 127.

PART D—NATIONAL PROGRAMS

SEC. 381. ADULT MIGRANT FARMWORKER AND IMMIGRANT EDUCATION.

(a) GENERAL AUTHORITY.—The Secretary is authorized to carry out a program of making grants to States and local eligible recipients to support planning, developing, and evaluating programs which are designed to provide adult education programs, services, and activities to meet the special needs of migrant farmworkers and immigrants. Programs operated from such grants shall be included in a State's plan and must conform to all requirements of programs provided for by the State's basic grant. In carrying out this section, the Secretary may enter into interagency agreements with the Secretary of Health and Human Services to conduct programs in conjunction with activities authorized under the Immigration Reform and Control Act of 1986.

(b) PRIORITY.—In carrying out the provisions of this part, the Secretary shall from funds reserved under section 313(d) give first priority to the portion of the program described in subsection (a) for migrant farmworkers.

(20 U.S.C. 1213) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

SEC. 382. ADULT LITERACY VOLUNTEER TRAINING.

(a) GENERAL AUTHORITY.—The Secretary is authorized to carry out a program of making grants to States and local eligible recipients to support planning, implementation, and evaluation of programs designed to train adult volunteers, especially the elderly, who wish to participate as tutors in local adult education programs.

(b) PRIORITY.—In carrying out the provisions of this part the Secretary shall from funds reserved under section 313(d) give second priority to the portion of the program described in subsection (a) for adult volunteers.

(20 U.S.C. 1213a) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

SEC. 383. STATE PROGRAM ANALYSIS ASSISTANCE AND POLICY STUDIES.

(a) FEDERAL ASSISTANCE.—(1) The Secretary is authorized to assist States in evaluating the status and progress of adult education in achieving the purposes of this title, and activities designed to provide such assistance shall include, but are not limited to—

(A) an analysis of State plans and of the findings of evaluations conducted pursuant to section 352, with suggestions to State agencies for improvements in planning or program operation; and

(B) the provision of an information network (in conjunction with the National Diffusion Network) on the results of research in adult education, the operation of model or innovative programs (including efforts to continue activities and services, under the program after the Federal funding has been discontinued) successful experiences in the planning, administration, and conduct of adult education programs, advances in curriculum and instructional practices, and other information useful in the improvement of adult education.

(2) PRIORITY.—In carrying out the provisions of this part the Secretary shall from funds reserved under section 313(d) give third priority to the portion of the program described in paragraph (1) for evaluation and research.

(b) DETERMINATION OF LITERACY.—The Secretary, in consultation with the Congress shall, within the first 2 years after enactment of the Adult Education Amendments of 1988, make a determination of the criteria for defining literacy, taking into consideration reports prepared by the National Assessment of Educational Progress and others and shall identify concretely those skills that comprise the basic educational skills needed for literate functioning. The Secretary, once the definition of literacy has been determined, shall, in consultation with the Congress and using the appropriate statistical sampling methodology, determine an accurate estimate of the number of illiterate adults in the Nation.

(c) REPORT ON STATUS OF LITERACY AND ADULT EDUCATION.—Subsequent to the determination of literacy and the number of illiterate individuals required in subsection (b), the Secretary shall submit a report every 4 years to the President and to the appropriate committees of the Congress on the status of literacy and adult education in the Nation.

(d) EVALUATION REPORT.—Three years after the date of enactment of the Adult Education Amendments of 1988, and thereafter in conjunction with the report under subsection (c), the Secretary shall report to the appropriate committees of the Congress on the results of program evaluations required under this title and conclusions drawn therefrom regarding progress toward meeting the goals and purposes of this title, together with such recommendations as the Secretary may wish to make.

(20 U.S.C. 1213b) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

SEC. 384. NATIONAL RESEARCH ACTIVITIES.

(a) APPROVED ACTIVITIES.—The Secretary shall, through the Office of Educational Research and Improvement, support applied research, development, demonstration, dissemination, evaluation, and related activities which will contribute to the improvement and expansion of adult education in the Nation. Such activities shall include the operation of the Institute established by subsection (c) and the establishment of a national clearinghouse to compile information on literacy curriculum and resources for adults, including youth and adults of limited English proficiency and adults with handicaps. The Secretary may support such activities directly, or through grants to, or cooperative agreements with, public or private institutions, agencies, or organizations, or individuals.

(b) RESEARCH CONCERNING SPECIAL NEEDS.—In addition to the responsibilities of the Assistant Secretary for Educational Research and Improvement under section 405 of the General Education Provisions Act, the Assistant Secretary may, with funds available under that section, with funds available under other Federal programs, or with funds set aside under section 313(d) of this title, support research on the special needs of persons requiring adult education including a study of the magnitude and nature of the needs of adults with learning disabilities who are eligible for participation in adult education programs. The Assistant Secretary may support such research directly or through grants to, or contracts or cooperative agreements with, public or private institutions, agencies, or organizations.

(c) ESTABLISHMENT.—(1) There is established the National Institute for Literacy (in this section referred to as the "Institute"). The Institute shall be administered under the terms of an interagency agreement entered into by the Secretary with the Secretary of Labor and the Secretary of Health and Human Services (in this section referred to as the "Interagency Group"). The head of any other agency designated by the President may be involved in the operation of the Institute as fits the involvement of such agency in accomplishing the purposes of the Institute. The Secretary may include in the Institute any research and development center supported under section 405(d)(4)(A)(ii) of the General Education Provisions Act and any other center, institute, or clearinghouse established within the Department of Education whose purpose is determined by the Secretary to be related to the purpose of the Institute.

(2) The Institute shall have offices separate from the offices of any agency or department involved in the operation of the Institute.

(3) The Interagency Group shall consider the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve such goals. The daily operations of the Institute shall be carried out by the Director. If the Board's recommendations are not followed, the Interagency Group shall provide a written explanation to the Board concerning actions the Interagency Group has taken that includes the Interagency Group's reasons for not following the Board's recommendations with respect to such actions. The Board may also request a meeting with the Interagency Group to discuss the Board's recommendations.

(d) DUTIES.—(1) The Institute is authorized, in order to improve and expand the system for delivery of literacy services, to—

(A) assist appropriate Federal agencies in setting specific objectives and strategies for meeting the goals of this title and in measuring the progress of such agencies in meeting such goals;

(B) conduct basic and applied research and demonstrations on literacy, including—

(i) how adults learn to read and write and acquire other skills;

(ii) how the literacy skills of parents affect the ability of children to learn literacy skills;

(iii) the assessment of literacy skills and the development of instructional techniques;

(iv) the best methods for assisting adults and families to acquire literacy skills, including the use of technology;

(v) the special literacy needs of individuals with learning disabilities and individuals with limited English proficiency;

(vi) how to effectively reach and teach the most educationally disadvantaged individuals;

(vii) the use of technology and other studies which will increase the literacy knowledge base, use but not duplicate the work of other research services, and build on the efforts of such other research services; and

(viii) how to attract, train, and retrain professional and volunteer teachers of literacy;

(C) assist Federal, State, and local agencies in the development, implementation, and evaluation of policy with respect to literacy by—

(i) establishing a national data base with respect to—

(I) literacy and basic skills programs, including programs in Federal departments, State agencies, and local agencies, and programs that are privately supported through nonprofit entities and for profit entities;

(II) assessment tools and outcome measures;

(III) the amount and quality of basic education provided in the workplace by businesses and industries; and

(IV) progress made toward the national literacy goals; and

(ii) providing technical and policy assistance to government entities for the improvement of policy and programs relating to literacy and the development of model systems for implementing and coordinating Federal literacy programs that can be replicated at the State and local level;

(D) provide program assistance, training, and technical assistance for literacy programs throughout the United States in order to improve the effectiveness of such programs and to increase the number of such programs, which assistance and training shall—

(i) be based on the best available research and knowledge; and

(ii) be coordinated with activities conducted by—

(I) regional educational laboratories supported under section 405(d)(4)(A)(i) of the General Education Provisions Act;

(II) curriculum centers assisted under section 251(a)(8) of the Carl D. Perkins Vocational and Applied Technology Education Act; and

(III) other educational and training entities that provide relevant technical assistance;

(E) collect and disseminate information to Federal, State, and local entities with respect to literacy methods that show great promise (including effective methods of assessment, effective literacy programs, and other information obtained through research or practice relating to adult and family learning that would increase the capacity and quality of literacy programs in the United States), using a variety of methods to ensure that the best information is received by State and local providers of literacy services;

(F) review and make recommendations regarding—

(i) ways to achieve uniformity among reporting requirements;

(ii) the development of performance measures; and

(iii) the development of standards for program effectiveness of literacy-related Federal programs; and

(G) provide a toll-free long-distance telephone line for literacy providers and volunteers.

(2) The Institute may enter into contracts or cooperative agreements with, or make grants to, individuals, public or private nonprofit institutions, agencies, organizations, or consortia of such institutions, agencies, or organizations to carry out the activities of the Institute. Such grants, contracts, or agreements shall be subject to the laws and regulations that generally apply to grants, contracts, or agreements entered into by Federal agencies.

(e) LITERACY LEADERSHIP.—(1) The Institute is, in consultation with the Board, authorized to award fellowships, with such stipends and allowances that the Director considers necessary, to outstanding individuals pursuing careers in adult education or literacy in the areas of instruction, management, research, or innovation.

(2) Fellowships awarded under this subsection shall be used, under the auspices of the Institute, to engage in research, education, training, technical assistance, or other activities to advance the field of adult education or literacy, including the training of volunteer literacy providers at the national, State, or local level.

(3) Individuals receiving fellowships pursuant to this subsection shall be known as "Literacy Leader Fellows".

(f) NATIONAL INSTITUTE BOARD.—(1)(A) There is established the National Institute Board (in this section referred to as the "Board"). The Board shall consist of 10 individuals appointed by the President with the advice and consent of the Senate from individuals who—

(i) are not otherwise officers or employees of the Federal Government;

(ii) are representative of entities or groups described in subparagraph (B); and

(iii) are chosen from recommendations made to the President by individuals who represent such entities or groups.

(B) Entities or groups described in this subparagraph are—

(i) literacy organizations and providers of literacy services, including—

(I) providers of literacy services receiving assistance under this Act; and

(II) nonprofit providers of literacy services;

(ii) businesses that have demonstrated interest in literacy programs;

(iii) literacy students;

(iv) experts in the area of literacy research;

(v) State and local governments; and

(vi) organized labor.

(2) The Board shall—

(A) make recommendations concerning the appointment of the Director and staff of the Institute;

(B) provide independent advice on the operation of the Institute; and

(C) receive reports from the Interagency Group and the Director.

(3) The Interagency Group may carry out the duties of the Board until the expiration of the 180-day period beginning on the date of the enactment of the National Literacy Act of 1991.

(4) Except as otherwise provided, the Board established by this subsection shall be subject to the provisions of the Federal Advisory Committee Act.

(5)(A) Each member of the Board shall be appointed for a term of 3 years. Any such member may be appointed for not more than 2 consecutive terms.

(B) Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that members' term until a successor has taken office. A vacancy in the Board shall be filled in the manner in which the original appointment was made. A vacancy in the Board shall not affect the powers of the Board.

(6) A majority of the members of the Board shall constitute a quorum but a lesser number may hold hearings. Any recommendation may be passed only by a majority of its members present.

(7) The Chairperson and Vice Chairperson of the Board shall be elected by the members. The term of office of the Chairperson and Vice Chairperson shall be 2 years.

(8) The Board shall meet at the call of the Chairperson or a majority of its members.

(g) GIFTS, BEQUESTS, AND DEVISES.—The Institute and the Board may accept (but not solicit), use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Institute or the Board, respectively. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Institute or the Board, respectively.

(h) MAILS.—The Board and the Institute may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(i) STAFF.—The Interagency Group, after considering recommendations made by the Board, shall appoint and fix the pay of a Director.

(j) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Institute may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

(k) EXPERTS AND CONSULTANTS.—The Board and the Institute may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(l) REPORT.—The Institute shall submit a report to the Congress in each of the first 2 years in which it receives assistance under this section, and shall submit a report biennially thereafter. Each report submitted under this subsection shall include—

(1) a comprehensive and detailed description of the Institute's operations, activities, financial condition, and accomplishments in the field of literacy for such fiscal year;

(2) a description of how plans for the operation of the Institute for the succeeding fiscal year will facilitate achievement of the goals of the Institute and the goals of the literacy programs within the Department of Education, the Department of Labor, and the Department of Health and Human Services; and

(3) any additional minority, or dissenting views submitted by members of the Board.

(m) NONDUPLICATION.—The Institute shall not duplicate any functions carried out by the Secretary pursuant to subsection (a) or (b). This subsection shall not be construed to prohibit the Secretary from delegating such functions to the Institute.

(n) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated for purposes of operating the Institute established by subsection (c) $15,000,000 for each of the fiscal years 1992, 1993, 1994, and 1995.

(2) Any amounts appropriated to the Secretary, the Secretary of Labor, the Secretary of Health and Human Services, or any other department that participates in the Institute for purposes that the Institute is authorized to perform under this section may be provided to the Institute for such purposes.

(20 U.S.C. 1213c) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302; amended July 25, 1991, P.L. 102–73, sec. 102(c), 105 Stat. 334.

SEC. 385. LIMITATION.

No grant may be made under this title for any educational program, activity, or service related to sectarian instruction or religious worship, or provided by a school or department of divinity. For purposes of this section, the term "school or department of divinity" means an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(20 U.S.C. 1213d) Enacted April 28, 1988, P.L. 100–297, sec. 2102, 102 Stat. 302.

National Literacy Act of 1991

(Public Law 102–73)

AN ACT To enhance the literacy and basic skills of adults, to ensure that all adults in the United States acquire the basic skills necessary to function effectively and achieve the greatest possible opportunity in their work and in their lives, and to strengthen and coordinate adult literacy programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Literacy Act of 1991".

[20 U.S.C. 1201 note]

SEC. 2. FINDINGS.

The Congress finds that—

(1) nearly 30,000,000 adults in the United States have serious problems with literacy;

(2) literacy problems are intergenerational and closely associated with poverty and pose a major threat to the economic well-being of the United States;

(3) present public and private literacy programs reach only a small portion of the population in need and often result in only minimal learning gains;

(4) the prevention of illiteracy is essential to stem further growth in national illiteracy rates;

(5) literacy programs generally lack adequate funding, adequate coordination with other literacy programs, and an adequate investment in teacher training and technology;

(6) access to better information about the best practices in the literacy field and more research in order to provide better diagnostic and instructional tools are essential for the improvement of literacy and employability in the United States;

(7) as many as 50,000,000 workers may have to be trained or retrained before the year 2000;

(8) the supply of unskilled workers is increasing while the demand for unskilled labor is decreasing;

(9) programs under the Adult Education Act, which are the largest Federal source of direct literacy services in the United States, serve only 10 percent of eligible participants; and

(10) all public and private literacy programs serve only about 19 percent of those who need help.

[20 U.S.C. 1201 note]

SEC. 3. DEFINITION.

For purposes of this Act the term "literacy" means an individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals, and develop one's knowledge and potential.

[20 U.S.C. 1201 note]

TITLE I—LITERACY: STRATEGIC PLANNING, RESEARCH, AND COORDINATION

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SEC. 102. NATIONAL INSTITUTE FOR LITERACY.

(a) PURPOSE.—It is the purpose of the amendment made by this section to enhance the national effort to eliminate the problem of illiteracy by the year 2000 by improving research, development and information dissemination through a national research center.

[20 U.S.C. 1213c]

(b) FINDINGS.—The Congress finds that—

(1) much too little is known about how to improve access to, and enhance the effectiveness of, adult literacy programs, assessment tools, and evaluation efforts;

(2) there is neither a reliable nor a central source of information about the knowledge base in the area of literacy;

(3) a national institute for literacy would—

(A) provide a national focal point for research, technical assistance and research dissemination, policy analysis, and program evaluation in the area of literacy; and

(B) facilitate a pooling of ideas and expertise across fragmented programs and research efforts.

[20 U.S.C. 1213c]

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TITLE II—WORKFORCE LITERACY

SEC. 201. NATIONAL WORKFORCE LITERACY ASSISTANCE COLLABORATIVE.

(a) ESTABLISHMENT.—There is established in the Department of Labor a National Workforce Literacy Assistance Collaborative (in this subsection referred to as the "Collaborative") to improve the basic skills of individuals, especially those individuals who are marginally employed or unemployed with low basic skills and limited opportunity for long-term employment and advancement, by assisting small- and medium-sized businesses, business associations that represent small- and medium-sized businesses, and labor organizations to develop and implement literacy programs tailored to the needs of the workforce.

(b) FUNCTIONS.—The Collaborative shall—

(1) develop and implement a plan for providing small- and medium-sized businesses with the technical assistance required to address the literacy needs of their workforce;

(2) monitor the development of workforce literacy training programs and identify best practices and successful small- and medium-sized business program models;

(3) inform businesses and unions of research findings and best practices regarding exemplary curricula, instructional techniques, training models, and the use of technology as a training tool in the workplace;

(4) provide technical assistance to help businesses assess individual worker literacy skill needs, implement workforce literacy training programs, and evaluate training program effectiveness;

(5) promote cooperation and coordination among State and local agencies and the private sector to obtain maximum uses of existing literacy and basic skills training resources;

(6) conduct regional and State small business workforce literacy meetings to increase program effectiveness and accountability;

(7) establish cooperative arrangements with the National Institute for Literacy and other centers involved in literacy and basic skills research and development activities; and

(8) prepare and produce written and video materials necessary to support technical assistance and information dissemination efforts.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for purposes of carrying out this section $5,000,000 for each of the fiscal years 1992, 1993, 1994, and 1995. [20 U.S.C. 1211–1]

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TITLE III—INVESTMENT IN LITERACY

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SEC. 304. FAMILY LITERACY PUBLIC BROADCASTING PROGRAM.

(a) PROGRAM AUTHORIZED.—(1) The Secretary is authorized, subject to the availability of appropriations, to enter into a contract with the Corporation for Public Broadcasting to arrange for the production and dissemination of family literacy programming and accompanying materials which would assist parents in improving family literacy skills and language development. In producing and developing such programming, the Corporation for Public Broadcasting shall work in cooperation with local public broadcasting stations to avoid duplication of efforts.

(2) After the program described in paragraph (1) is produced, the Corporation for Public Broadcasting shall arrange to have audio and video instructional media materials for distribution at sites chosen from among—

(A) State and local libraries operating literacy programs, and

(B) nonprofit entities serving hard-to-serve populations as defined in section 304(b)(2), including community-based organizations, volunteer organizations and other nongovernmental entities.

(3) The audio and video instructional media materials described in paragraph (2) shall be used at sites described in paragraph (2), and on a loan basis, distributed to families.

(4) One year after distribution of the audio and video instructional media materials, the Corporation for Public Broadcasting shall report to the Congress on the distribution and use of the audio and video instructional media materials produced pursuant to this subsection and such audio and video instructional media materials' contribution in promoting literacy.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for fiscal year 1992 to carry out the provisions of subsection (i), of which $100,000 shall be reserved for reproducing and distributing programming or audio and video instructional media materials.

[20 U.S.C. 1213c note]

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TITLE VI—LITERACY FOR INCARCERATED INDIVIDUALS

SEC. 601. FUNCTIONAL LITERACY AND LIFE SKILLS PROGRAMS FOR STATE AND LOCAL PRISONERS.

(a) ESTABLISHMENT.—The Secretary is authorized to make grants to eligible entities to assist such entities in establishing, improving, and expanding a demonstration or system-wide functional literacy program.

(b) PROGRAM REQUIREMENTS.—(1) To qualify for funding under subsection (d), each functional literacy program shall—

(A) to the extent possible, make use of advanced technologies, such as interactive video- and computer-based adult literacy learning; and

(B) include—

(i) a requirement that each person incarcerated in the system, prison, jail, or detention center who is not functionally literate, except a person described in paragraph (2), shall participate in the program until the person—

(I) achieves functional literacy, or in the case of an individual with a disability, achieves a level of functional literacy commensurate with his or her ability;

(II) is granted parole;

(III) completes his or her sentence; or

(IV) is released pursuant to court order; and

(ii) a prohibition on granting parole to any person described in clause (i) who refuses to participate in the program, unless the State parole board determines that the prohibition should be waived in a particular case; and

(iii) adequate opportunities for appropriate education services and the screening and testing of all inmates for functional literacy and disabilities affecting functional literacy, including learning disabilities, upon arrival in the system or at the prison, jail, or detention center.

(2) The requirement of paragraph (1)(B)(i) may not apply to a person who—

(A) is serving a life sentence without possibility of parole;

(B) is terminally ill; or

(C) is under a sentence of death.

(c) ANNUAL REPORT.—(1) Within 90 days after the close of the first calendar year in which a literacy program authorized by subsection (a) is placed in operation, and annually for each of the 4 years thereafter, a grantee shall submit a report to the Secretary with respect to its literacy program.

(2) A report under paragraph (1) shall disclose—

(A) the number of persons who were tested for eligibility during the preceding year;

(B) the number of persons who were eligible for the literacy program during the preceding year;

(C) the number of persons who participated in the literacy program during the preceding year;

(D) the names and types of tests that were used to determine functional literacy and the names and types of tests that were used to determine disabilities affecting functional literacy;

(E) the average number of hours of instruction that were provided per week and the average number per student during the preceding year;

(F) sample data on achievement of participants in the program, including the number of participants who achieved functional literacy;

(G) data on all direct and indirect costs of the program; and

(H) information on progress toward meeting the program's goals.

(d) COMPLIANCE GRANTS.—(1) The Secretary shall make grants to eligible entities that elect to establish a program described in subsection (a) for the purpose of assisting in carrying out the programs, developing the plans, and submitting the reports required by this section.

(2) An eligible entity may receive a grant under this subsection if the entity—

(A) submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require;

(B) agrees to provide the Secretary—

(i) such data as the Secretary may request concerning the cost and feasibility of operating the functional literacy programs authorized by subsection (a), including the annual reports required by subsection (c); and

(ii) a detailed plan outlining the methods by which the provisions of subsections (a) and (b) will be met, including specific goals and timetables.

(e) LIFE SKILLS TRAINING GRANTS.—(1) The Secretary is authorized to make grants to eligible entities to assist them in establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration into society.

(2) To receive a grant under this subsection, an eligible entity shall—

(A) submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require; and

(B) agree to report annually to the Secretary on the participation rate, cost, and effectiveness of the program and any other aspect of the program on which the Secretary may request information.

(3) In awarding grants under this subsection, the Secretary shall give priority to programs that have the greatest potential for innovation, effectiveness, and replication in other systems, jails, and detention centers.

(4) Grants awarded under this subsection shall be for a period not to exceed 3 years, except that the Secretary may establish a procedure for renewal of the grants under paragraph (1).

(f) Definitions.—For the purposes of this section—

(1) the term "eligible entity" means a State correctional agency, a local correctional agency, a State correctional education agency, and a local correctional education agency;

(2) the term "functional literacy" means at least an eighth grade equivalence or a functional criterion score on a nationally recognized literacy assessment; and

(3) the term "life skills" includes self-development, communication skills, job and financial skills development, education, interpersonal and family relationship development, and stress and anger management.

(g) Authorization of Appropriations.—There are authorized to be appropriated for purposes of carrying out this section $10,000,000 for fiscal year 1992, $15,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, and $25,000,000 for fiscal year 1995.

[20 U.S.C. 1211–2]

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PART VIII—ADDITIONAL PROGRAMS TO IMPROVE ELEMENTARY AND SECONDARY INSTRUCTION

Education for Economic Security Act

AN ACT To provide assistance to improve elementary, secondary, and postsecondary education in mathematics and science; to provide a national policy for engineering, technical, and scientific personnel; to provide cost sharing by the private sector in training such personnel; to encourage creation of new engineering, technical, and scientific jobs; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Education for Economic Security Act".

(20 U.S.C. 3901 note) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1267.

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act to improve the quality of mathematics and science teaching and instruction in the United States.

(20 U.S.C. 3901) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1267.

DEFINITIONS

SEC. 3. For the purpose of this Act—

(1) The term "area vocational education school" has the same meaning given that term under section 521(3) of the Carl D. Perkins Vocational Education Act.. [1]

(2) The term "Director" means the Director of the National Science Foundation.

(3) The term "elementary school" has the same meaning given that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965.

(4) The term "Governor" means the chief executive of a State.

(5) The term "Foundation" means the National Science Foundation.

(6) The term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965.

(7) The term "local educational agency" has the same meaning given that term under section 198(a)(10) of the Elementary and Secondary Education Act of 1965.

(8) The term "secondary school" has the same meaning given that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965.

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[1] So in original.

(9) The term "Secretary" means the Secretary of Education.

(10) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(11) The term "State agency for higher education" means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or, if there is no such officer or agency, an officer or agency designated for the purpose of this title by the Governor or by State law.

(12) The term "State educational agency" has the meaning given that term under section 198(a)(17) of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 3902) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1267; amended Nov. 22, 1985, P.L. 99–159, sec. 221, 99 Stat. 897.

TITLE I—NATIONAL SCIENCE FOUNDATION SCIENCE AND ENGINEERING EDUCATION

POLICY

SEC. 101. (a) The Congress declares that the science and engineering education responsibilities of the National Science Foundation are—

(1) to improve the quality of instruction in the fields of mathematics, science, and engineering;

(2) to support research, fellowships, teacher-faculty-business exchange programs in mathematics, science, and engineering;

(3) to improve the quality and availability of instrumentation for mathematics, science, and engineering instruction;

(4) to encourage partnerships in education between local and State education agencies, business and industry, colleges and universities, and cultural and professional institutions and societies; and

(5) to improve the quality of education at all levels in the fields of mathematics, science, and engineering.

(b) In exercising its responsibilities to strengthen scientific and engineering research potential and science and engineering education programs at all levels, the Foundation shall avoid undue concentration of support for research and education activities.

(20 U.S.C. 3911) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1268; reenacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 893.

FUNCTIONAL OBJECTIVES; USES OF FUNDS

SEC. 102. (a) In carrying out its science and engineering education responsibilities, the Foundation shall have the following functional objectives: public understanding of science and technology, faculty enhancement, student education and training, instructional development and instrumentation, and materials development and dissemination.

(b) Funds under this title shall, consistent with such functional objectives, be used for—

(1) enhancement of public understanding of science and engineering through informal education activities using a variety of mediums such as broadcasting, museums, clubs, and amateur science societies;

(2) development of new science and engineering faculty resources and talents;

(3) enhancement of the quality of science and engineering instruction in colleges of teacher education;

(4) development of four-year college faculty and instructors in high technology fields;

(5) development of two-year community college faculty and instructors especially in high technology fields;

(6) development of precollege mathematics, science and engineering education and training;

(7) encouragement of potential students, including underrepresented and underserved populations, to pursue careers in mathematics, science, engineering, and critical foreign languages;

(8) development of instructional instrumentation and systems for postsecondary technical, engineering, and scientific education; and

(9) development of science, engineering, and education networks to aid in the development and dissemination of successful curricula, methods, and materials.

(20 U.S.C. 3912) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1268; reenacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 894.

TEACHER INSTITUTES

SEC. 103. (a) The Foundation shall, in accordance with the provisions of this title, make competitive grants to institutions of higher education, businesses, nonprofit private organizations (including schools), local education agencies, professional engineering and scientific associations, museums, libraries, public broadcasting entities (as defined in section 397(11) of the Communications Act of 1934), and appropriate State agencies to support institutes and workshops for supervisors and teachers in public and private elementary and secondary schools for the purpose of improving the subject knowledge and teaching skills of such teachers in the areas of mathematics and science.

(b) In making grants under this section, the Foundation shall assure that there is an equitable distribution among States of institutes established and operated with funds made available under this section. The Foundation shall award not less than one institute in each State, except that the Foundation may waive this requirement if there is no proposal from a State which meets the requirements of this title. Proposals which exceed $300,000 in any fiscal year incorporating the services or resources of more than two entities in the design and operation of the institute, may be funded at the discretion of the Director of the Foundation.

(c) Institutes assisted under this title may, to the extent possible, involve the cooperation of advanced technology businesses and other businesses which are able to supply assistance in the teaching of mathematics and science.

(d) In making grants under this title, the Foundation shall require assurances that local education agencies will be involved in the planning and development of the institute in the case of applications submitted by other eligible applicants described in subsection (a) of this section, or that one or more such applicants will be involved in the planning and development of the institute in the case of applications submitted by State or local education agencies.

(20 U.S.C. 3913) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1269; reenacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 894.

MATERIALS DEVELOPMENT AND METHODS RESEARCH FOR MATHEMATICS, SCIENCE, AND ENGINEERING

SEC. 104. (a) The Foundation is authorized, in accordance with the provisions of this title, to award competitive grants to institutions of higher education, businesses, nonprofit private organizations, local education agencies, professional engineering and scientific associations, museums, libraries, public broadcasting entities (as defined in section 397(11) of the Communications Act of 1934), and appropriate State agencies—

(1) for instructional curriculum improvement and faculty development in mathematics, science, and engineering;

(2) for programs designed to enhance public understanding of mathematics, science, and engineering, including the use of pulic broadcasting entities; and

(3) for research on methods of instruction and educational programs in mathematics, science, engineering, and critical foreign languages.

(b) Studies conducted under subsection (a)(3) may include—

(1) teaching and learning research and its application to local and private sector instructional materials development and to improved teacher training programs;

(2) research on the use of local and informal science education activities;

(3) research on recruitment, retention, and improvement of mathematics, science, engineering, and critical languages faculties; and

(4) analysis of materials and methods for mathematics, science, and engineering education used in other countries and their potential application in the United States.

(c) Funds awarded for such competitive grants shall be expended through a system requiring matching of the grant. The minimum amount required as a match shall be equal to a percentage of the grant that is determined by the Foundation. Funds made available for matching purposes may include in-kind services or other resources.

(d) In making grant applications for materials or methods research for the purposes described in subsections (a)(1) and (a)(3), the Foundation shall assure the involvement of appropriate State or local education agencies in the case of applications submitted by other entities described in subsection (a), or that one or more of such other entities will be consulted in the case of applications submitted by State or local education agencies.

(20 U.S.C. 3914) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1269; reenacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 895.

GRADUATE FELLOWSHIPS

SEC. 105. The Foundation is authorized, in accordance with the provisions of this title, to establish and carry out a program of graduate fellowships for the purpose of encouraging and assisting promising students to continue their education and research in mathematics, science, and engineering.

(20 U.S.C. 3915) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1269; reenacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 896.

OTHER FUNCTIONAL ACTIVITIES

SEC. 106. (a) The Foundation is authorized to expend up to 15 per centum of the funds available for science and engineering education for applications which the Foundation determines will meet one or more of the functional objectives described in section 102(b).

(b) Such programs may include a program for the exchange of mathematics, science, or engineering faculty between institutions of higher education (particularly institutions having nationally recognized research facilities) and eligible institutions. For the purposes of this section, the term "eligible institution" means an institution of higher education which—

(1) has an enrollment which includes a substantial percentage of students who are members of a minority group, or who are economically or educationally disadvantaged; or

(2) is located in a community that is not within commuting distance of a major institution of higher education; and

(3) demonstrates a commitment to meet the special educational needs of students who are members of a minority group or are economically or educationally disadvantaged.

(20 U.S.C. 3916) Enacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 896.

SCIENCE AND ENGINEERING EDUCATION STRATEGIC PLAN

SEC. 107. The Foundation shall develop a five-year strategic plan for science and engineering education, to be up-dated on an annual basis, and submitted to the Committee on Labor and Human Resources of the Senate, and the Committee on Science and Technology of the House of Representatives by November 30 of each year.

(20 U.S.C. 3917) Enacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 896.

APPROVAL OF PROPOSALS

SEC. 108. The Foundation shall adopt approval procedures designed to assure that awards are made on the basis of the scientific and educational merit as determined by the peer review process. To the maximum extent possible, the Foundation shall assure that there is an equitable distribution of resources with respect to institutions and geographical areas.

(20 U.S.C. 3918) Enacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 896.

SPECIAL CONSIDERATION OF UNDERREPRESENTED AND UNDERSERVED POPULATIONS

SEC. 109. In providing financial assistance under this title, the Foundation shall make every effort to ensure that consideration is given to proposals which contain provisions designed to meet the needs of underrepresented and underserved populations.

(20 U.S.C. 3919) Enacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 897.

AVAILABILITY OF FUNDS

SEC. 110. Funds to carry out this title for any fiscal year shall be made available from amounts appropriated pursuant to annual authorizations of appropriations for the National Science Foundation for Science and Engineering Education. For fiscal year 1986, funds to carry out this title shall be available from amounts authorized by section 102(a)(8) of the National Science Foundation Authorization Act for fiscal year 1986.

(20 U.S.C. 3920) Enacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 897.

PROHIBITION AGAINST THE FEDERAL CONTROL OF EDUCATION

SEC. 111. The provisions of section 432 of the General Education Provisions Act, relating to prohibition against Federal control of education, shall apply to each program and award authorized by this title.

(20 U.S.C. 3921) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1269; reenacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 897.

PARTICIPATION OF TEACHERS FROM PRIVATE SCHOOLS

SEC. 112. The Foundation shall, after consultation with appropriate private school representatives, make provision for the benefit of teachers in private elementary and secondary schools in the programs authorized by this title, in order to assure equitable participation of such teachers.

(20 U.S.C. 3922) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1269; reenacted Nov. 22, 1985, P.L. 99–159, sec. 201, 99 Stat. 897.

TITLE III—PARTNERSHIPS IN EDUCATION FOR MATHEMATICS, SCIENCE, AND ENGINEERING

PART A—HIGHER EDUCATION PARTNERSHIPS

SHORT TITLE

SEC. 301. This part may be cited as the "Partnerships in Education for Mathematics, Science, and Engineering Act".

(20 U.S.C. 3981, note) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1283; amended August 23, 1988, P.L. 100–418, sec. 6031(b)(2), 102 Stat. 1479, 1483.

STATEMENT OF PURPOSE

SEC. 302. It is the purpose of this part to supplement State and local resources to—

(1) improve the quality of instruction in the fields of mathematics, science, and engineering in the State;

(2) furnish additional resources and support for research, student scholarships, and faculty exchange programs in the fields of mathematics, science, and engineering; and

(3) encourage partnerships in education between the business community, institutions of higher education, and elementary and secondary schools in the community.

(20 U.S.C. 3981) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1283; amended August 23, 1988, P.L. 100–418, sec. 6031(b)(2), 102 Stat. 1483.

DEFINITIONS

SEC. 303. As used in this part—

(1) the term "applicant" means with respect to activities described in section 305(a) an institution of higher education and the other participants described in paragraph (3) of section 305(a), and with respect to activities described in section 305(b) a local educational agency and the other participants described in paragraph (3) of section 305(b);

(2) the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials; and meaning given that term by section 1201(a) of the Higher Education Act of 1965;

(3) the term "State agency for higher education" means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(20 U.S.C. 3982) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1283; amended Nov. 22, 1985, P.L. 99–159, sec. 232, 99 Stat. 900; amended August 23, 1988, P.L. 100–418, sec. 6031(b)(2), 102 Stat. 1483.

PROGRAM AUTHORIZED

SEC. 304. (a) The Secretary is authorized, in accordance with the provisions of this part, to make grants to applicants to pay the Federal share of the costs of the activities described in section 305.

(b) There are authorized to be appropriated $50,000,000 for each of the fiscal years 1986, and 1987. There are authorized to be appropriated to carry out the provisions of this part $15,000,000 for fisal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993.

(20 U.S.C. 3983) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1284; amended Nov. 22, 1985, P.L. 99–159, secs. 231, 233, 99 Stat. 900, 901; amended April 28, 1988, P.L. 100–297, sec. 2301, 102 Stat. 319; amended August 23, 1988, P.L. 100–418, sec. 6031(b)(2), 102 Stat. 1483.

AUTHORIZED ACTIVITIES

SEC. 305. (a)(1) An applicant may use payments received under this part in any fiscal year for higher education programs and activities described in this subsection.

(2) Grants under this subsection may be used for partnership in education programs—

(A) for the improvement of instruction in mathematics, science, computer science, and engineering education at the postsecondary level;

(B) for awarding scholarships to students at institutions of higher education in the fields of mathematics, science, computer science, and engineering;

(C) for the operation of faculty exchange programs by the institutions of higher education and business concerns within the State;

(D) for research in the fields of mathematics, science, computer science, and engineering;

(E) for the acquisition, rehabilitation, and renovation of equipment and instrumentation for use in instruction in the fields of mathematics, science, computer science, and engineering; and

(F) to promote public understanding of science, mathematics, and computer science.

(3) Education partnerships under this subsection may include institutions of higher education, business concerns, nonprofit private organizations, local educational agencies, professional mathematic and scientific associations, museums, libraries, educational television stations, and if the State so desires, appropriate State agencies.

(b)(1) An applicant may use payments received under this part in any fiscal year for programs and activities described in this subsection.

(2) A local educational agency may carry out an elementary and secondary school partnership in education program under which—

(A) elementary and secondary school teachers in the schools of local educational agencies who teach mathematics, science, or computer science are made available to local business concerns and business concerns with establishments located in the community to serve in such concerns or establishments;

(B) personnel of local business concerns and business concerns with establishments located in the community serve as consultants, lecturers, teaching assistants, or teachers of mathematics, science, or computer science in the elementary and secondary schools within the State;

(C) training and retraining is furnished to elementary and secondary school teachers of mathematics, science, and computer science under a cooperative arrangement between the State or local educational agency and appropriate business concerns;

(D) secondary school students observe, participate, and work in local business concerns and business concerns with establishments located in the community; and

(E) computer clubs and extracurricular activities involving modern technologies are established in elementary and secondary schools.

(3) Partnerships under this subsection may include local educational agencies, business concerns, nonprofit private organizations, institutions of higher education, professional mathematic and

scientific associations, museums, libraries, educational television stations, and, if the State so desires, appropriate State agencies.

(20 U.S.C. 3984) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1284; amended August 23, 1988, P.L. 100–418, sec. 6031(b)(2), 102 Stat. 1483.

APPLICATION

SEC. 306. (a) Any applicant which desires to receive a grant under this part shall submit an application approved under section 307 to the Secretary, at such time, in such manner, and accompanied by such additional information as the Secretary may reasonably require. Each such application shall—

(1) describe the activities for which assistance under this part is sought;

(2) provide assurances that not more than 5 per centum of the amount received by the applicant in any fiscal year may be expended on administrative expenses;

(3) with respect to each program for which assistance is sought, provide assurances that—

(A) 30 per centum of the funds for each such project will be furnished by business concerns within the community;

(B) 20 per centum of the funds will be supplied by—

(i) the State,

(ii) the institution of higher education or the local educational agency, as the case may be, participating in the program; and

(iii) the other parties participating in the program;

(C) no stipend will be paid directly to employees of a profitmaking business concern; and

(D) teachers participating in the exchange program may not be employed by the participating business concern with which the teacher served within three years after the end of the exchange program unless the teacher repays the full cost of the exchange program to the State and local educational agency, as the case may be; and [1]

(4) provide assurances that whenever the program for which assistance is sought includes scholarships, the scholarships be awarded to undergraduate students at institutions of higher education within the State who wish to pursue a course of study in mathematics or science, engineering or computer science, and that each student awarded a scholarship under this part will receive a stipend which shall not exceed the cost of tuition at the institution of higher education plus a stipend of not to exceed $750 for each academic year of study for which the scholarship is awarded;

(5) set forth policies and procedures to assure that whenever the application includes a local educational agency, to the extent consistent with the number and location of children in the school district of such agency who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted under this part;

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[1] So in orgin. The word "and" probably should not appear.

(6) provide assurances that consideration is given to programs and activities designed to meet the needs of underrepresented and underserved populations;

(7) provide assurances that in the consideration of applications submitted under section 307(a) that equitable consideration is given to applications submitted by private and public institutions of higher education; and

(8) provide such additional assurances as the Secretary determines essential to ensure compliance with the requirements of this part.

(b) A regional consortium of applicants in two or more States may file a joint application under the provisions of subsection (a) of this section.

(20 U.S.C. 3985) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1285; amended Nov. 22, 1985, P.L. 99–159, 99 Stat. 900; amended August 23, 1988, P.L. 100–418, sec. 6031(b)(2), 102 Stat. 1483.

SUBMISSION OF APPLICATIONS

SEC. 307. Each applicant within a State which desires to receive a grant under this part shall submit the application prepared in accordance with section 306 to the State agency on[1] higher education or the State educational agency, as the case may be, for approval and shall submit the approved application to the Foundation under section 306. Each such application shall be submitted jointly by the local educational agency in the case of activities described in section 305(a), or an institution of higher education in the case of activities described in section 305(b), and each business concern or other party that is to participate in the program for which assistance is sought.

(20 U.S.C. 3986) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1286; amended August 23, 1988, P.L. 100–418, sec. 6031(b)(2), 102 Stat. 1483.

APPROVAL OF APPLICATIONS

SEC. 308. (a)(1) The Secretary shall establish criteria for approval of applications under this part.

(2) No application may be approved by the Secretary unless the State educational agency or the State agency for higher education, as the case may be, determines that the application is consistent with State plans for elementary and secondary education or State plans for higher education, as the case may be, in the State.

(b) The Secretary shall adopt approval procedures designed to assure that there is equitable distribution of grants among the States.

(20 U.S.C. 3987) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1286; amended Nov. 22, 1985, P.L. 99–159, sec. 231, 99 Stat. 900; amended August 23, 1988, P.L. 100–418, sec. 6031(b)(2), 102 Stat. 1483.

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[1] Probably should be "for".

PAYMENTS; FEDERAL SHARE; LIMITATION

SEC. 309. (a)(1) The Secretary shall pay, to each applicant having an application approved under section 308, the Federal share of the cost of the program described in the application.

(2) The Federal share for each fiscal year shall be 50 per centum.

(3) The non-Federal share of payments under this part may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(b) Not more than 15 per centum of the funds appropriated under this part in any fiscal year may be paid to applicants in any single State.

(20 U.S.C. 3988) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1286; amended Nov. 22, 1985, P.L. 99–159, sec. 231, 99 Stat. 900; amended August 23, 1988, P.L. 100–418, sec. 6031(b)(2), 102 Stat. 1483.

PART B—ELEMENTARY AND SECONDARY EDUCATION PARTNERSHIPS

PURPOSE

SEC. 321. It is the purpose of this part to supplement State and local resources to—

(1) improve the quality of instruction in the fields of mathematics and science in elementary and secondary schools;

(2) furnish additional resources and support for the acquisition of equipment, and instructional and reference materials and improvement of laboratory facilities in elementary and secondary schools; and

(3) encourage partnerships in science and mathematics education between the business community, museums, libraries, professional mathematics and scientific associations, private nonprofit organizations, appropriate State agencies and elementary and secondary schools.

(20 U.S.C. 3991) Enacted August 23, 1988, P.L. 100–418, sec. 6031(a)(2), 102 Stat. 1479.

PROGRAMS AUTHORIZED

SEC. 322. (a) GRANTS.—The Secretary may make grants to States to pay the Federal share of the cost of the programs described in section 324.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for purposes of carrying out this chapter $20,000,000 for fiscal year 1988.

(20 U.S.C. 3992) Enacted August 23, 1988, P.L. 100–418, sec. 6031(a)(2), 102 Stat. 1480.

AMENDMENT TO STATE APPLICATION

SEC. 323. (a) APPLICATION.—A State shall be eligible to receive a grant under this part if—

(1) the State submits to the Secretary as part of its application under section 209[1] such information and assurances as

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[1] Title II of P.L. 98–377 entitled the "Education for Economic Security Act" was repealed by section 2303 of P.L. 100–297 (102 Stat. 324).

the Secretary may require at such time as the Secretary shall establish; and

(2) the Secretary approves such application.

(b) APPLICATION REQUIREMENTS.—The Secretary shall require each application to include—

(1) a description of the State's procedures relating to the use of funds from grants received under this part, including the approval process for local applications;

(2) an assurance that not more than 1 percent of the amount received shall be used for administrative expenses; and

(3) an assurance that the State will, to the extent possible, assist local school districts in economically depressed areas to obtain matching funds from business concerns.

(20 U.S.C. 3993) Enacted August 23, 1988, P.L. 100–418, sec. 6031(a)(2), 102 Stat. 1480.

ELIGIBLE PROGRAMS

SEC. 324. (a) IN GENERAL.—A State may use funds from grants received in any fiscal year under this part for elementary and secondary programs described in this section. The State educational agency shall administer such funds, which shall be awarded to such programs on a competitive basis.

(b) USE OF FUNDS.—Funds from grants received under this part may be used for the following:

(1) IMPROVEMENT OF ELEMENTARY AND SECONDARY RESOURCES.—Such funds may be used for acquisition of equipment, instructional and reference materials, and partnership in education programs designed to—

(A) improve instruction in mathematics and science education at the elementary and secondary level;

(B) improve laboratory facilities, classroom and library resources in elementary and secondary mathematics and science education; and

(C) attract matching dollars and in kind contributions of equipment, learning resources or shared time from business concerns, libraries, museums, nonprofit private organizations, professional mathematics and scientific associations, and appropriate State agencies.

(2) ADVANCED PLACEMENT PROGRAMS.—(A) Such funds may be used for advanced placement programs operated by local educational agencies that are designed to allow qualified secondary students to attend college preparatory schools, colleges, or universities on a part-time or full-time basis with respect to science and mathematics instruction.

(B) A local educational agency that receives funds from a grant under this part for an advanced placement program described in subparagraph (A) shall allocate to such program a percentage of funds received from the State on a per student basis according to—

(i) the number of students participating in the program; and

(ii) the instruction time such students receive under the program.

(20 U.S.C. 3994) Enacted August 23, 1988, P.L. 100–418, sec. 6031(a)(2), 102 Stat. 1480.

LOCAL APPLICATIONS

SEC. 325. (a) ELIGIBILITY.—An applicant that desires to receive a grant under this part shall submit an application to the State educational agency, at such time, and in such manner, as the State may require. Such application may take the form of an amendment to an assessment submitted by the local educational agency under section 210[1], if appropriate.

(b) REQUIREMENTS FOR APPLICATION.—The State shall require each application to include—

(1) a description of the activities for which assistance under this part is sought;

(2) assurances that not more than 5 percent of the amount received by the applicant in any fiscal year shall be expended on administrative expenses;

(3) if the funds are to be used for improvement of elementary and secondary resources as described in subsection (b)(1)—

(A) an estimate of the amount to be spent on equipment, facilities improvement, library resources, and classroom instructional material;

(B) an estimate of the number of elementary and secondary students who will be aided by activities and expenditures under the grant;

(C) assurances that—

(i) except as provided in subsection (c), a minimum of 25 percent of the funds for each project will be supplied by business concerns within the community;

(ii) no stipend shall be paid directly to employees of a profitmaking business concern;

(iii) provision shall be made for the equitable participation in the project of children who are enrolled in private elementary and secondary schools; and

(iv) consideration will be given to programs and activities designed to meet the needs of educationally disadvantaged and other traditionally underserved populations; and

(4) if the funds are to be used for advanced placement programs as described in subsection (b)(2), a commitment as to the percentage of funds received from the State on a per student basis that shall be used by the local educational agency to defray costs of the advanced placement program.

(c) WAIVER.—The State may waive or reduce the amount of matching funds required under subsection (b)(3)(C)(i) if the State determines that—

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[1] Title II of P.L. 98–377 entitled the "Education for Economic Security Act" was repealed by section 2303 of P.L. 100–297 (102 Stat. 324).

(1) substantial need exists in the area served by the applicant for a grant under this part; and

(2) the required amount of matching funds cannot be made available.

(d) JOINT APPLICATIONS.—A regional consortium of applicants in 2 or more local school districts may file a joint application under subsection (a).

(20 U.S.C. 3995) Enacted August 23, 1988, P.L. 100–418, sec. 6031(a)(2), 102 Stat. 1481.

SUBMISSION OF APPLICATIONS

SEC. 326. An applicant within a State that desires to receive a grant under this chapter shall submit an application prepared in accordance with section 325 to the State educational agency for approval. Each application with respect to funds for improvement of elementary and secondary resources under section 324(b)(1) shall be submitted jointly by the local educational agency and each business concern or other party that is to participate in the activities for which assistance is sought.

(20 U.S.C. 3996) Enacted August 23, 1988, P.L. 100–418, sec. 6031(a)(2), 102 Stat. 1482.

APPROVAL OF APPLICATIONS

SEC. 327. (a) CRITERIA.—The State shall establish criteria for approval of applications under this section. Such criteria shall include—

(1) consideration of the local district's need for, and inability to locally provide for, the activities, equipment, library and instructional materials requested;

(2) the number and nature of elementary and secondary students who will benefit from the planned program; and

(3) the expressed level of financial and in-kind commitment from other parties to the program.

(b) APPROVAL PROCEDURES.—The State shall adopt approval procedures designed to ensure that grants are equitably distributed among—

(1) rural, urban, and suburban areas; and

(2) small, medium, and large local educational agencies.

(20 U.S.C. 3997) Enacted August 23, 1988, P.L. 100–418, sec. 6031(a)(2), 102 Stat. 1482.

COMPUTATION OF GRANT AMOUNTS

SEC. 328. (a) PAYMENTS TO GRANTEES.—

(1) PAYMENT BY STATE.—The State shall pay to the extent of amounts received by it from the Secretary under this part, to each applicant having an application approved under section 327, the Federal share of the cost of the program described in the application.

(2) AMOUNT.—(A) Except as provided in subparagraph (B), the Federal share for each fiscal year shall be 75 percent.

(B) In the case of an applicant that receives a waiver under section 325(c), the Federal share for each fiscal year may be as much as 100 percent.

(3) NON-FEDERAL SHARE.—The non-Federal share of payments under this part may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(b) PAYMENTS TO STATES.—Except as provided in subsection (c), each State shall receive under this part the greater of—

(1) an amount equal to its share of funds appropriated under chapter 1 of the Education Consolidation and Improvement Act; or

(2) $225,000.

(c) REDUCTION FOR INSUFFICIENT FUNDING.—If sums appropriated to carry out this part are not sufficient to permit the Secretary to pay in full the grants which States may receive under subsection (b), the amount of such grants shall be ratably reduced.

(20 U.S.C. 3998) Enacted August 23, 1988, P.L. 100–418, sec. 6031(a)(2), 102 Stat. 1482.

TITLE V—ASBESTOS SCHOOL HAZARD ABATEMENT[1]

SEC. 501. SHORT TITLE.

This title may be cited as the "Asbestos School Hazard Abatement Act of 1984".

(20 U.S.C. 4011 note)

SEC. 502. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) exposure to asbestos fibers has been identified over a long period of time and by reputable medical and scientific evidence as significantly increasing the incidence of cancer and other severe or fatal diseases, such as asbestosis;

(2) medical evidence has suggested that children may be particularly vulnerable to environmentally induced cancers;

(3) medical science has not established any minimum level of exposure to asbestos fibers which is considered to be safe to individuals exposed to the fibers;

(4) substantial amounts of asbestos, particularly in sprayed form, have been used in school buildings, especially during the period 1946 through 1972;

(5) partial surveys in some States have indicated that (A) in a number of school buildings materials containing asbestos fibers have become damaged or friable, causing asbestos fibers to be dislodged into the air, and (B) asbestos concentration far exceeding normal ambient air levels have been found in school buildings containing such damaged materials;

(6) the presence in school buildings of friable or easily damaged asbestos creates an unwarranted hazard to the health of the school children and school employees who are exposed to such materials;

(7) the Department of Health and Human Services and the Environmental Protection Agency, as well as several States, have attempted to publicize the potential hazards to school children and employees from exposure to asbestos fibers, but

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[1] The Asbestos School Hazard Abatement Act of 1984 (20 U.S.C. 4011–4021) consists of title V of the Education for Economic Security Act (Public Law 98–377; Aug. 11, 1984; 98 Stat. 1267) and the amendments made by subsequent enactments.

there is no systematic program for remedying hazardous conditions in schools;

(8) because there is no Federal health standard regulating the concentration of asbestos fibers in noncommercial workplace environments such as schools, school employees and students may be exposed to hazardous concentrations of asbestos fibers in the school buildings which they use each day;

(9) without a program of information distribution, technical and scientific assistance, and financial support, many local educational agencies and States will not be able to mitigate the potential asbestos hazards in their schools; and

(10) the effective regulation of interstate commerce for the protection of the public health requires the establishment of programs under this title to mitigate hazards from exposure to asbestos fibers and materials emitting such fibers.

(b) PURPOSE.—It is the purpose of this title to—

(1) direct the Administrator of the Environmental Protection Agency to establish a program to assist States and local educational agencies to ascertain the extent of the danger to the health of school children and employees from asbestos materials in schools;

(2) provide continuing scientific and technical assistance to State and local agencies to enable them to identify and abate asbestos hazards in schools;

(3) provide financial assistance for the abatement of asbestos threats to the health and safety of school children or employees; and

(4) assure that no employee of any local educational agency suffers any disciplinary action as a result of calling attention to potential asbestos hazards which may exist in schools.[1]

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[1] The Asbestos School Hazard Abatement Reauthorization Act of 1990 (P.L. 101–637; 104 Stat. 4589) amended the Asbestos School Hazard Abatement Act of 1984 extensively. Section 2 of P.L. 101–637 provides:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Environmental Protection Agency has estimated that more than forty-four thousand school buildings contain friable asbestos, exposing more than fifteen million school children and one million five hundred thousand school employees to unwarranted health hazards.

(2) All elementary and secondary schools are required by the Asbestos Hazard Emergency Response Act to inspect for asbestos, develop an asbestos management plan, and implement such plan.

(3) The Environmental Protection Agency has estimated it will cost local education agencies more than $3,000,000,000 to comply with the Asbestos Hazard Emergency Response Act.

(4) Without a continuing program of information assistance, technical and scientific assistance, training, and financial support, many local educational agencies will be unable to carry out sufficient response actions to prevent the release of asbestos fibers into the air.

(5) Without the provisions of sufficient financial support, the cost to local educational agencies of implementing asbestos response actions may have an adverse impact in their educational mission.

(6) The effective regulation of interstate commerce for the protection of human health and the environment requires the continuation of programs to mitigate hazards of asbestos fibers and materials emitting such fibers.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To direct the Environmental Protection Agency to maintain a program to assist local schools in carrying out their responsibilities under the Asbestos Hazard Emergency Response Act.

(2) To provide continuing scientific and technical assistance to State and local agencies to enable them to identify and abate asbestos health hazards.

(3) To provide financial assistance to State and local agencies for training of persons involved with inspections and abatement of asbestos, for conducting necessary reinspections

(20 U.S.C. 4011)

SEC. 503. ASBESTOS HAZARD ABATEMENT PROGRAM.

(a) ABATEMENT PROGRAM.—There is hereby established a program within the Environmental Protection Agency to be known as the Asbestos Hazards Abatement Program (hereinafter in this title referred to as "Program").

(b) DUTIES.—The duties of the Administrator in implementing and effectuating the Program shall include—

(1) the compilation of medical, scientific, and technical information including, but not limited to—

(A) the health and safety hazards associated with asbestos materials;

(B) the means of identifying, sampling, and testing materials suspected of emitting asbestos fibers; and

(C) the means of abating the threat posed by asbestos and asbestos containing materials;

(2) the distribution of the information described in paragraph (1) (in any appropriate form such as pamphlets, reports, or instructions) to State and local educational agencies and to other institutions, including parent and employee organizations, for the purpose of carrying out activities described in this title;

(3) not later than November 15 of each year for which this title is authorized, the development and distribution of applications, or notifications to all local educational agencies of the availability of application forms including information for obtaining such forms; and

(4) the review of applications for financial assistance, and the approval or disapproval of such applications, in accordance with the provisions of section 505.

(20 U.S.C. 4012)

SEC. 504. STATE RECORDS AND PRIORITY LISTS.

(a) RECORDS.—The Governor of each State shall maintain records on—

(1) the presence of asbestos materials in school buildings of local educational agencies;

(2) the asbestos detection and abatement activities and other response actions conducted by local educational agencies (including activities relating to the replacement of the asbestos materials removed from school buildings with other appropriate building materials); and

(3) repairs made to restore school buildings to conditions comparable to those which existed before the abatement activities referred to in paragraph (2) were undertaken.

(b) PRIORITY LIST.—(1) Each year, in accordance with procedures established by the Administrator, the Governor of each State shall—

(A) submit to the Administrator a priority list of all schools under the authority of a local educational agency within the

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of school buildings, and for the actual abatement of asbestos threats to the health and safety of school children or employees.

(4) To assure that no employee of a local educational agency suffers any disciplinary action as a result of calling attention to potential asbestos hazards which may exist in schools

State, without regard to the public or private nature of the school involved, that are candidates for abatement activities and other response actions; and

(B) forward to the Administrator for each candidate for abatement activities and other response actions all applications for financial assistance prepared by the local educational agencies in accordance with the provisions of section 505;[1] and

(2) The priority list shall rank the potential candidates for abatement action based on the nature and magnitude of the existing and potential exposure presented by the asbestos materials.

(3) For each school listed, the Governor shall certify that the statement of need contained in the application for assistance accurately reflects the financial resources available to the local educational agency for the asbestos abatement program.

(4) For the purpose of determining the adequacy of the financial resources available to a local educational agency for the abatement of asbestos threats the Governor shall, to the extent practicable, consider the following:

(A) A measure of financial need used by the State in which the local educational agency is located.

(B) The estimated per capita income of the locality of such agency or of those directly or indirectly providing financial support for such agency.

(C) The extent to which the local school millage rate falls above or below (i) the millage rate average of the State and (ii) the millage rate of other local educational agencies with comparable enrollment, per capita income, and resource base.

(D) The ratio, expressed as a percentage, of the estimated cost of the project to the total budget of the local educational agency.

(E) The borrowing capacity of the local educational agency.

(F)[2] Any additional costs to the local educational agency of meeting the special needs of disadvantaged students.

(G) Any other factor that demonstrates that the local educational agency has limited financial resources.

(20 U.S.C. 4013)

SEC. 505. FINANCIAL ASSISTANCE.

(a) ASSISTANCE PROGRAM.—There is hereby established within the Environmental Protection Agency an Asbestos Hazards Abatement Assistance Program (hereinafter in this Act referred to as the "Assistance Program"), which shall be administered in accordance with this section.

(b) APPLICATION SUBMISSION.—(1) Applications for financial assistance shall be submitted by a local educational agency to the Governor, or the Governor's designee, who shall establish a priority list based on the criteria of section 504(b)(2).

(2) Pursuant to section 504, the Governor shall submit applications, together with the Governor's report and priority list, to the

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[1] Subsection (b) of section 5 of Public Law 101-637 (104 Stat. 4590) struck out subparagraph (C) and should have amended subparagraph (B) by striking out "; and" and inserting a period in lieu thereof.

[2] So in original. Indentation is wrong.

Administrator who shall review and rank such applications pursuant to section 505(c)(2) and propose financing pursuant to the criteria of section 504(b)(4). The Administrator shall approve or disapprove applications for financial assistance no later than April 30 of each year.

(3) Within sixty days of receipt of the information described in section 504(b)(1), the Secretary of the Department of Education shall review such information and, in the Secretary's discretion, provide to the Administrator comments and recommendations based upon the needs of local educational agencies for financial assistance. Within sixty days of receipt of the Secretary's report, or expiration of the time allowed for such report, the Administrator shall approve or disapprove applications for financial assistance.

(c) Review of Application.—(1) The Administrator shall provide financial assistance on a school-by-school basis to local educational agencies in accordance with other provisions of this section to carry out projects for—

(A) abating the threat posed by materials containing asbestos to the health and safety of children or employees;

(B) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(C) restoring school buildings to conditions comparable to those existing before abatement activities were undertaken pursuant to this section.

(2) The Administrator shall review and list in priority order applications for financial assistance. In ranking applications, the Administrator shall consider—

(A) the priority assigned to the abatement program by the Governor pursuant to section 504(b)(2); and

(B)(i) the likelihood of release of asbestos fibers into a school environment;

(ii) any other evidence of the risk caused by the presence of asbestos including, but not limited to, situations in which there is a substantial quantity of dry loose asbestos-containing material on horizontal surfaces or asbestos-containing material is substantially deteriorated or damaged, and there is asbestos-containing material in an air plenum or in a high traffic area, confined space, or within easy reach of a passerby;

(iii) the extent to which the corrective action proposed by the applicant will reduce the exposure of school children and school employees; and

(iv) the extent to which the corrective action proposed by the applicant uses the least burdensome methods which protect human health and the environment.

(3) In determining whether an applicant is eligible for assistance, and the nature and amount of financial assistance, the Administrator shall consider the financial resources available to the applicant as certified by the Governor pursuant to section 504(b)(4).

(d) Limitation.—In no event shall financial assistance be provided under this title to an applicant if—

(1) the Administrator determines that such applicant has resources adequate to support an appropriate asbestos materials abatement program; or

(2) the applicant is not in compliance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.).

(e) AMOUNT OF LOAN OR GRANT.—(1) An applicant for financial assistance may be granted a loan of up to 100 percent of the costs of an abatement program or, if the Administrator determines the applicant is unable to undertake and complete an asbestos materials abatement program with a loan, such applicant may also receive a grant (alone or in combination with a loan) not to exceed 50 percent of the total costs of abatement, in the amount which the Administrator deems necessary.

(2) In approving any grant, the Administrator shall state with particularity the reasons why the applicant is unable to undertake and complete the abatement program with loan funds.

(f) LOAN AGREEMENT.—Loans under this section shall be made pursuant to agreements which shall provide for the following:

(1) the loan shall not bear interest;

(2) the loan shall have a maturity period of not more than twenty years (as determined by the Administrator) and shall be repayable during such period at such times and in such amounts as the Administrator may specify in the loan agreement;

(3) repayment shall be made to the Secretary of the Treasury for deposit in the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act (Public Law 99–519; 20 U.S.C. 4022); and

(4) such other terms and conditions that the Administrator determines necessary to protect the financial interest of the United States.

(g) APPLICATION REQUIREMENTS.—(1) No financial assistance may be provided under this section unless an application has been submitted to the Administrator in accordance with such procedures as may be developed by the Administrator.

(2) The Administrator shall not approve an application unless—

(A) the application contains such information as the Administrator may require, including but not limited to information describing—

(i) the nature and extent of the asbestos problem for which the assistance is sought;

(ii) the asbestos content of the material to be abated;

(iii) the methods which will be used to abate the asbestos materials;

(iv) the amount and type of financial assistance requested;

(v) a description of the financial resources of the local educational agency; and

(vi) a justification for the type and amount of the financial assistance requested.

(B) the application contains a certification that—

(i) the local educational agency has prepared and is implementing an asbestos management plan, as required under title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.); and

(ii) all activities to be conducted with the financial assistance will be performed by individuals trained and accredited in conformance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) and regulations promulgated under that title;

(C) the application contains assurances that the local educational agency will furnish such information as is necessary for the Administrator to make the report required by section 507 of this title.

(3) No financial assistance may be provided by the Administrator under this section for projects described in subsection (a)(2) on which abatement action was completed prior to January 1, 1984.

(4) Except as provided in section 512(b)(1), in approving applications the Administrator shall provide assistance to the local educational agencies having the highest priority among applications being considered in order of ranking until the appropriated funds are expended.

(20 U.S.C. 4014)

SEC. 506. ADMINISTRATIVE PROVISIONS.

(a) REGULATIONS.—The Administrator shall promulgate rules and regulations as necessary to implement the authorities and requirements of this title.

(b) PROCEDURES.—The Administrator also shall establish procedures to be used by local educational agencies, in programs for which financial assistance is made available under section 505, for—

(1) abating asbestos materials in school buildings;

(2) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(3) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken.

(c) RELATIONSHIP TO OTHER LAWS.—Nothing contained in this title shall be construed, interpreted, or applied to diminish in any way the level of protection required under any other State or Federal worker protection or other applicable laws.

(d) OTHER AUTHORITY.—In order to effectuate the purposes of this title, the Administrator may also adopt such other procedures, standards, and regulations as the Administrator deems necessary, including—

(1) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;

(2) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and

(3) periodic reporting with respect to the activities that have taken place using funds loaned or granted under this title.

(20 U.S.C. 4015)

SEC. 507. ANNUAL REPORT.

ANNUAL REPORT[1]

During each calendar year until 1999, the Administrator shall prepare and submit, not later than June 1 of each year, to the Committee on Environment and Public Works of the Senate and to the Committee on Energy and Commerce of the House of Representatives a report on the loan and grant program authorized by section 505 of this title. The report shall—

(1) describe the number of applications received;

(2) describe the number of loans and grants made in the preceding calendar year and specify each applicant for and recipient of a loan or grant;

(3) specify the number of loan or grant applications which were disapproved during the preceding calendar year and describe the reasons for such disapprovals;

(4) describe the types of programs for which loans or grants were made;

(5) specify the estimated total costs of such programs to the recipients of loans or grants and specify the amount of loans or grants made under the program authorized by this section; and

(6) estimate the number of schools still in need of assistance and the amount of resources needed by such schools, categorized by State, to abate all remaining asbestos hazards.

(20 U.S.C. 4016)

SEC. 508. RECOVERY OF COSTS.

(a) LOAN CONDITION.—(1) As a condition of the award of any financial assistance under section 505, the recipient of any such loan or grant shall permit the United States to sue on behalf of such recipient any person determined by the Attorney General to be liable to the recipient for the costs of any activities undertaken by the recipient under such section.

(2) The proceeds from any judgment recovered in any suit brought by the United States under paragraph (1) (or, if the recipient files a similar suit on its own behalf, the proceeds from a judgment recovered by the recipient in such suit) shall be used to repay to the United States, by deposit in the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act (20 U.S.C. 4022), to the extent that the proceeds are sufficient to provide for such repayment, an amount equal to the sum of—

(A) the amount (i) outstanding on any loan and (ii) of any grant made to the recipient; and

(B) an amount equal to the interest which would have been charged on such loan were the loan made by a commercial lender at prevailing interest rates (as determined by the Administrator).

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[1] Section 14(a)(7) of P.L. 101–637 amended the section heading of section 507 without striking out the old section heading.

(b) EXPEDITIOUS RECOVERY.—The Attorney General shall, where appropriate, proceed in an expeditious manner to recover the amounts expended by the United States to carry out this title from the persons identified by the Attorney General as being liable for such costs.

(20 U.S.C. 4017)

SEC. 509. EMPLOYEE PROTECTION.

No State or local educational agency receiving assistance under this title may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee has brought to the attention of the public information concerning any asbestos problem in the school buildings within the jurisdiction of such agency.

[20 U.S.C. 4018]

SEC. 510. AFFECT ON RIGHTS UNDER OTHER LAWS.

Except as otherwise provided in section 508, nothing in this title shall—

(1) affect the right of any party to seek legal redress in connection with the purchase or installation of asbestos materials in schools or any claim of disability or death related to exposure to asbestos in a school setting; or

(2) affect the rights of any party under any other law.

(20 U.S.C. 4019)

SEC. 511. DEFINITIONS.

For purposes of this title:

(1) The term "asbestos" means—

(A) chrysotile, amosite, or crocidolite; or

(B) in fibrous form, tremolite, anthophyllite, or actinolite.

(2) The term "Attorney General" means the Attorney General of the United States.

(3) The term "threat" or "hazard" means that an asbestos material is friable or easily damaged, or within reach of students or employees or otherwise susceptible to damage (including damage from water, vibration, or air circulation) which could result in the dispersal of asbestos fibers into the school environment.

(4) The term "local educational agency" means—

(A) any local educational agency as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965; and

(B) the governing authority of any nonprofit elementary or secondary school.

(5) The term "nonprofit elementary or secondary school" means—

(A) any elementary or secondary school as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965 owned and operated by one or more nonprofit corporations or associaions no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and

(B) any school of any agency of the United States.

(6) The term "school buildings" means—

(A) structures suitable for use as classrooms, laboratories, libraries, school eating facilities, or facilities used for the preparation of food;

(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(C) other facilities used for the instruction of students, for research, or for the administration of educational or research programs; and

(D) maintenance, storage, or utility facilities essential to the operation of the facilities described in subparagraphs (A) through (C) of this paragraph.

(7) The term "Administrator" means the Administrator of the Environmental Protection Agency, or the Administrator's designee.

(8) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Bureau of Indian Affairs.

(9) The term "response action" has the meaning given such term by section 202(11) of the Toxic Substances Control Act (15 U.S.C. 2642(11).

(20 U.S.C. 4020)

SEC. 512. AUTHORIZATION.

(a)(1) There are hereby authorized to be appropriated for the asbestos abatement program not more than $200,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995. In addition, for such purposes and for each of such fiscal years there are authorized to be appropriated out of the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act of 1986 (20 U.S.C. 4022) such sums as are contained in such trust fund in each of such fiscal years.

(2) The sums appropriated under this title shall remain available until expended.

(b)(1) A State with qualified applicants shall receive no less than one-half of 1 per centum of the sums appropriated under this title or the total of the amounts requested by such applicants, whichever is less. Those amounts available in each fiscal year under this paragraph shall be obligated before the end of that fiscal year. For the purposes of this paragraph the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Bureau of Indian Affairs and, taken together, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Of those sums appropriated for the implementation of this title, not more than 5 percent may be reserved during each fiscal year for the administration of this title and for programs including (but not limited to) the following:

(A) The establishment of training centers for contractors, engineers, school employees, parents, and other personnel to provide instruction, in accordance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.), on asbestos assessment and abatement.

(B) The development and dissemination of abatement guidance documents to assist in evaluation of potential hazards and the determination of proper abatement programs.

(C) The development of rules and regulations regarding inspection, reporting, and recordkeeping.

(D) The development of a comprehensive testing and technical assistance program.

(3) Of those sums appropriated for any fiscal year for the implementation of this title, the Administrator may use not more than 5 percent to provide grants to States for the following purposes:

(A) Assisting local educational agencies in performing the periodic reinspections and training activities required under title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.).

(B) Establishing and maintaining programs to accredit personnel performing asbestos inspections and response actions.

(20 U.S.C. 4021)

[Section 2303 of P.L. 100–297 (102 Stat. 324) repealed titles VI and VII of this Act]

TITLE VIII—THE EQUAL ACCESS ACT

SHORT TITLE

SEC. 801. This title may be cited as "The Equal Access Act".

(20 U.S.C. 4071 note) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1302.

DENIAL OF EQUAL ACCESS PROHIBITED

SEC. 802. (a) It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.

(b) A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.

(c) Schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that—

(1) the meeting is voluntary and student-initiated;

(2) there is no sponsorship of the meeting by the school, the government, or its agents or employees;

(3) employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;

(4) the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and

(5) nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.

(d) Nothing in this title shall be construed to authorize the United States or any State or political subdivision thereof—

(1) to influence the form or content of any prayer or other religious activity;

(2) to require any person to participate in prayer or other religious activity;

(3) to expend public funds beyond the incidental cost of providing the space for student-initiated meetings;

(4) to compel any school agent or employee to attend a school meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee;

(5) to sanction meetings that are otherwise unlawful;

(6) to limit the rights of groups of students which are not of a specified numerical size; or

(7) to abridge the constitutional rights of any person.

(e) Notwithstanding the availability of any other remedy under the Constitution or the laws of the United States, nothing in this title shall be construed to authorize the United States to deny or withhold Federal financial assistance to any school.

(f) Nothing in this title shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.

(20 U.S.C. 4071) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1302.

DEFINITIONS

SEC. 803. As used in this title—

(1) The term "secondary school" means a public school which provides secondary education as determined by State law.

(2) The term "sponsorship" includes the act of promoting, leading, or participating in a meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.

(3) The term "meeting" includes those activities of student groups which are permitted under a school's limited open forum and are not directly related to the school curriculum.

(4) The term "noninstructional time" means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

(20 U.S.C. 4072) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1303.

SEVERABILITY

Sec. 804. If any provision of this title or the application thereof to any person or circumstances is judicially determined to be invalid, the provisions of the remainder of the title and the application to other persons or circumstances shall not be affected thereby.

(20 U.S.C. 4073) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1304.

CONSTRUCTION

Sec. 805. The provisions of this title shall supersede all other provisions of Federal law that are inconsistent with the provisions of this title.

(20 U.S.C. 4074) Enacted August 11, 1984, P.L. 98–377, 98 Stat. 1304.

TITLE IX—STAR SCHOOLS PROGRAM

SHORT TITLE

Sec. 901. This title may be cited as the "Star Schools Program Assistance Act".

(20 U.S.C. 4081 note) Enacted April 28, 1988, P.L. 100–297, sec. 2302, 102 Stat. 320.

STATEMENT OF PURPOSE

Sec. 902. It is the purpose of this title to encourage improved instruction in mathematics, science, and foreign languages as well as other subjects such as literacy skills and vocational education and to serve underserved populations including the disadvantaged, illiterate, limited-English proficient, and disabled through a star schools program under which grants are made to eligible telecommunications partnerships to enable such eligible telecommunications partnerships to develop, construct, and acquire telecommunications audio and visual facilities and equipment, to develop and acquire instructional programming, and to obtain technical assistance for the use of such facilities and instructional progrmming.

(20 U.S.C. 4081) Enacted April 28, 1988, P.L. 100–297, sec. 2302, 102 Stat. 320; amended August 17, 1991, P.L. 102–103, sec. 301, 105 Stat. 499.

PROGRAM AUTHORIZED

Sec. 903. (a) General Authority.—(1) The Secretary is authorized, in accordance with the provisions of this title, to make grants to eligible telecommunications partnerships for the Federal share of the cost of the development, construction, and acquisition of telecommunications facilities and equipment, of the development and acquisition of instructional programming, and of technical assistance.

(2) The Secretary shall award grants pursuant to paragraph (1) for a period of 2 years.

(3) Grants awarded pursuant to paragraph (1) may be awarded for an additional 2-year period in accordance with section 907.

(b) AUTHORIZATION OF APPROPRIATIONS.—(1) There is authorized to be appropriated $50,000,000 for fiscal year 1992 and such sums as may be necessary in fiscal year 1993.

(2) Funds appropriated pursuant to this subsection shall remain available until expended.

(c) LIMITATIONS.—(1) A grant made to an eligible telecommunications partnership under this title may not exceed $10,000,000 in any one fiscal year.

(2)(A) Not less than 25 percent of the funds available to the Secretary in any fiscal year under this Act shall be used for the cost of instructional programming.

(B)[1] Not less than 25 percent of the funds available to the Secretary in any fiscal year under this title shall be used for telecommunications facilities and equipment.

(3) Not less than 50 percent of the funds available in any fiscal year under this title shall be used for the cost of facilities, equipment, teacher training or retraining, technical assistance, or programming, for local educational agencies which are eligible to receive assistance under chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(d) FEDERAL SHARE.—(1) The Federal share for any fiscal year shall be 75 percent.

(2) The Secretary may reduce or waive the requirements of the non-Federal share required under paragraph (1) of this subsection upon a showing of financial hardship.

(e) COORDINATION.—The Department of Education, the National Science Foundation, the Department of Agriculture, and any other Federal agency operating a telecommunications network for educational purposes shall coordinate the activities assisted under such programs.

(20 U.S.C. 4082) Enacted April 28, 1988, P.L. 100–297, sec. 2302, 102 Stat. 320; amended Aug. 17, 1991, P.L. 102–103, sec. 302, 105 Stat. 499.

ELIGIBLE TELECOMMUNICATIONS PARTNERSHIPS

SEC. 904. (a) GENERAL RULE.—In order to be eligible for grants under this title, an eligible telecommunications partnership shall consist of—

(1) a public agency or corporation established for the purpose of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities, except that any such agency or corporation shall represent the interests of elementary and secondary schools which are eligible to participate in the program under chapter 1 of title I of the Elementary and Secondary Education Act of 1965; or

(2) a partnership which includes three or more of the following, and at least one of which shall be an agency described in subparagraph (A) or (B), and which will provide a telecommunications network:

(A) a local educational agency, which has a significant number of elementary and secondary schools which are eligible for assistance under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 or elementary and secondary schools operated for Indian children by the Department of the Interior eligible under section 1005(d) of the Elementary and Secondary Education Act of 1965,

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[1] So in original. Margin is incorrect.

(B) a State educational agency,

(C) an institution of higher education or a State higher education agency,

(D) a teacher training center or academy which—

(i) provides teacher preservice and inservice training, and

(ii) receives Federal financial assistance or has been approved by a State agency,

(E)(i) a public or private entity with experience and expertise in the planning and operation of a telecommunications network, including entities involved in telecommunications through satellite, cable, telephone, or computer; or

(ii) a public broadcasting entity with such experience, or

(F) a public or private elementary or secondary school.

(b) SPECIAL RULE.—An eligible telecommunications partnership must be organized on a statewide or multistate basis.

(c) SPECIAL STATEWIDE NETWORK.—

(1) IN GENERAL.—The Secretary may fund one statewide telecommunications network under this title if such network—

(A) provides two-way full motion interactive video and audio communications;

(B) links together public colleges and universities and secondary schools throughout the State; and

(C) meets any other requirements determined appropriate by the Secretary.

(2) STATE CONTRIBUTION.—A statewide telecommunications network funded under paragraph (1) shall contribute (either directly or through private contributions) non-Federal funds equal to not less than 50 percent of the cost of such network.

(20 U.S.C. 4083) Enacted April 28, 1988, P.L. 100–297, sec. 2302, 102 Stat. 320; amended Aug. 17, 1991, P.L. 102–103, sec. 303, 105 Stat. 500.

APPLICATIONS

SEC. 905. (a) APPLICATION REQUIRED.—Each eligible telecommunications partnership which desires to receive a demonstration grant under this title may submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b) CONTENTS OF APPLICATION.—Each such application shall—

(1) describe the telecommunications facilities and equipment and technical assistance for which assistance is sought which may include—

(A) the design, development, construction, and acquisition of State or multistate educational telecommunications networks and technology resource centers;

(B) microwave, fiber optics, cable, and satellite transmission equipment, or any combination thereof;

(C) reception facilities;

(D) satellite time;

(E) production facilities;

(F) other telecommunications equipment capable of serving a wide geographic area;

(G) the provision of training services to instructors who will be using the facilities and equipment for which assistance is sought in using such facilities and equipment, and in integrating programs into the class curriculum; and

(H) the development of educational programming for use on a telecommunications network;

(2) in the case of an application for assistance for instructional programming, describe the types of programming which will be developed to enhance instruction and training and provide assurances that such programming will be designed in consultation with professionals who are experts in the applicable subject matter and grade level;

(3) demonstrate that the eligible telecommunications partnership has engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the telecommunications partnership will increase the availability of courses of instruction in mathematics, science, and foreign languages,[1] (in accordance with section 907) as well as the other subjects to be offered;

(4) describe the training policies for teachers and other school personnel to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought;

(5) provide assurances that the financial interest of the United States in the telecommunications facilities and equipment will be protected for the useful life of such facilities and equipment;

(6) provide assurances that a significant portion of any facilities, equipment, technical assistance, and programming for which assistance is sought for elementary and secondary schools will be made available to schools of local educational agencies which have a high percentage of children counted for the purpose of chapter 1 of title I of the Elementary and Secondary Education Act of 1965;

(7) describe the manner in which traditionally underserved students (such as students who are disadvantaged, limited-English proficient, disabled, or illiterate) will participate in the benefits of the telecommunications facilities, equipment, technical assistance, and programming assisted under this title and will use existing telecommunications equipment, where available;

(8) provide assurances that the applicant will use the funds to supplement and not supplant funds otherwise available for the purpose of this title;

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[1] So in original. The comma probably should follow the closing parenthesis.

(9) describe the activities or services for which assistance is sought, including activities and services such as—

(A) providing facilities, equipment, training, services, and technical assistance described in paragraphs (1), (2), (4) and (7);

(B) making programs accessible to individuals with disabilities through mechanisms such as closed captioning and descriptive video services;

(C) linking networks together, for example, around an issue of national importance such as elections;

(D) sharing curriculum materials between networks;

(E) providing teacher and student support services;

(F) incorporating community resources such as libraries and museums into instructional programs;

(G) providing teacher training to early childhood development and Head Start teachers and staff;

(H) providing teacher training to vocational education teachers and staff; and

(I) providing programs for adults at times other than the regular school day in order to maximize the use of telecommunications facilities and equipment.

(10) provide such additional assurances as the Secretary may reasonably require.

(c) Approval of Application; Priority.—The Secretary shall, in approving applications under this title, give priority to applications which demonstrate that—

(1) a concentration and quality of mathematics, science, and foreign language resources which, by their distribution through the eligible telecommunications partnership, will offer significant new educational opportunities to network participants, particularly to traditionally underserved populations and areas with scarce resources and limited access to courses in mathematics, science, and foreign languages;

(2) the eligible telecommunications partnership has secured the direct cooperation and involvement of public and private educational institutions, State and local government, and industry in planning the network;

(3) the eligible telecommunications partnership will serve the broadest range of institutions, including, in the case of elementary and secondary schools, those elementary and secondary schools having significant numbers of children counted for the purpose of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, programs providing instruction outside of the school setting, institutions of higher education, teacher training centers, research institutes, and private industry;

(4) a significant number of educational institutions have agreed to participate or will participate in the use of the telecommunications system for which assistance is sought;

(5) the eligible telecommunications partnership will have substantial academic and teaching capabilities including the capability of training, retraining, and inservice upgrading of teaching skills;

(6) the eligible telecommunications partnership will—

(A) provide a comprehensive range of courses for educators with different skill levels to teach instructional strategies for students with different skill levels;

(B) provide training to participating educators in ways to integrate telecommunications courses into the existing school curriculum; and

(C) include instruction for students, teachers, and parents;

(7) the eligible telecommunications partnership will serve a multistate area;

(8) a telecommunications entity (such as a satellite, cable, telephone, computer, or public or private television station) will participate in the partnership and will donate equipment or in-kind services for telecommunications linkages; and

(9) the eligible telecommunications partnership will, in providing services with assistance sought under this Act, meet the needs of groups of individuals traditionally excluded from careers in mathematics and science because of discrimination, inaccessibility, or economically disadvantaged backgrounds.

(d) Geographic Distribution.—In approving applications under this title, the Secretary shall assure an equitable geographic distribution of grants.

(20 U.S.C. 4084) Enacted April 28, 1988, P.L. 100–297, sec. 2302, 102 Stat. 320; amended Aug. 17, 1991, P.L. 102–103, sec. 304, 105 Stat. 501.

DISSEMINATION OF COURSES AND MATERIALS UNDER THE STAR SCHOOLS PROGRAM

Sec. 906. (a) Report.—Each eligible telecommunications partnership awarded a grant under this title shall report to the Secretary a listing and description of available courses of instruction and materials to be offered by educational institutions and teacher training centers which will be transmitted over satellite, specifying the satellite on which such transmission will occur and the time of such transmission.

(b) Dissemination of Courses of Instruction.—The Secretary shall compile and prepare for dissemination a listing and description of available courses of instruction and materials to be offered by educational institutions and teacher training centers equipped with satellite transmission capabilities, as reported to the Secretary under subsection (a) of this section.

(c) Dissemination to State Educational Agencies.—The Secretary shall distribute the list required by subsection (b) of this section to all State educational agencies.

(20 U.S.C. 4085) Enacted April 28, 1988, P.L. 100–297, sec. 2302, 102 Stat. 320.

CONTINUING ELIGIBILITY

Sec. 907. (a) In General.—In order to be eligible to receive an additional grant under section 903(a)(3) in any fiscal year, an eligible telecommunications partnership shall demonstrate in the application submitted pursuant to section 905 that such partnership will—

(1) continue to provide services in the subject areas and geographic areas assisted with funds received under this title in previous fiscal years; and

(2) use all such grant funds to provide expanded services by—

(A) increasing the number of students, schools or school districts served by the courses of instruction assisted under this title in previous fiscal years;

(B) providing new courses of instruction; or

(C) serving new populations of underserved individuals, such as children or adults who are disadvantaged, have limited-English proficiency, are disabled, are illiterate, lack high school diplomas or their equivalent.

(b) SPECIAL RULES.—Grant funds received pursuant to the application of subsection (a) shall be used to supplement and not supplant services provided by the recipient under this title in previous fiscal years.

(20 U.S.C. 4085a) Enacted Aug. 17, 1991, P.L. 102–103, sec. 305(2), 105 Stat. 502.

EVALUATION

SEC. 908. (a) IN GENERAL.—From amounts appropriated pursuant to the authority of section 903(b), the Secretary shall reserve the greater of not more than $500,000 or 5 percent of such appropriations to conduct an independent evaluation by grant, contract or cooperative agreement, of the Star Schools Assistance Program.

(b) REPORT.—The Secretary shall prepare and submit an interim report on the evaluation described in subsection (a) not later than January 1, 1993 and shall prepare and submit a final report on such evaluation not later than June 1, 1993.

(c) EVALUATION.—Such evaluation shall include—

(1) a review of the effectiveness of telecommunications partnerships and programs after Federal funding ceases;

(2) an analysis of non-Federal funding sources, including funds leveraged by Star Schools funds and the permanency of such funding;

(3) an analysis of how Star Schools grantees spend funds appropriated under this Act;

(4) a review of the subject matter, content effectiveness, and success of distance learning through Star Schools program funds, including an in-depth study of student learning outcomes as measured against stated course objectives of distance learning courses offered by Star Schools grantees;

(5) a comprehensive review of in-service teacher training programs through Star Schools programming, including the number of teachers trained, time spent in training programs, and a comparison of the effectiveness of such training and conventional teacher training programs;

(6) an analysis of Star School projects that focus on teacher certification and other requirements and the resulting effect on the delivery of instructional programming;

(7) the effects of distance learning on curricula and staffing patterns at participating schools;

(8) the number of students participating in the Star Schools program and an analysis of the socioeconomic characteristics of students participating in Star Schools programs, including a review of the differences and effectiveness of programming and services provided to economically and educationally disadvantaged and minority students;

(9) an analysis of the socioeconomic and geographic characteristics of schools participating in Star Schools projects, including a review of the variety of programming provided to different schools; and

(10) the impact of dissemination grants under section 910 on the use of technology-based programs in local educational agencies.

(20 U.S.C. 4085b) Enacted Aug. 17, 1991, P.L. 102–103, sec. 305(2), 105 Stat. 502.

FEDERAL ACTIVITIES

SEC. 909. The Secretary may assist grant recipients under this title in acquiring satellite time, where appropriate, as economically as possible.

(20 U.S.C. 4085c) Enacted Aug. 17, 1991, P.L. 102–103, sec. 305(2), 105 Stat. 502.

DISSEMINATION GRANTS

SEC. 910. (a) IN GENERAL.—The Secretary shall make grants under this section to telecommunications partnerships funded by the Star Schools Program and to other eligible entities to enable such partnerships and entities to provide dissemination and technical assistance to State and local educational agencies not presently served by telecommunication partnerships.

(b) SPECIAL RULE.—The Secretary shall make grants under this section in any fiscal year in which the amount appropriated for this title exceeds the amount appropriated for this title in fiscal year 1991 by not less than 10 percent.

(c) RESERVATION.—In any fiscal year in which the Secretary awards grants under this section in accordance with subsection (b), the Secretary shall reserve not less than 5 percent but not more than 10 percent of the amount appropriated under this title for such fiscal year to award such grants.

(d) APPLICATIONS.—

(1) IN GENERAL.—Each telecommunications partnership and other eligible entity that desires to receive a grant under this section shall submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(2) CONTENTS.—Each application described in paragraph (2) shall contain assurances that the telecommunications partnership or other eligible entity shall provide technical assistance to State and local educational agencies to plan and implement technology-based systems, including—

(A) information regarding successful distance learning resources for States, local educational agencies, and schools;

(B) assistance in connecting users of distance learning, regional educational service centers, colleges and universities, the private sector, and other relevant entities;

(C) assistance and advice in the design and implementation of systems to include needs assessments and technology design; and

(D) support for the identification of possible connections, and cost-sharing arrangements for users of such systems.

(e) DEFINITION.—For purposes of this section, the term "eligible entity" means a federally funded program or an institution of higher education that has demonstrated expertise in educational applications of technology and provides comprehensive technical assistance to educators and policy makers at the local level.

(20 U.S.C. 4085d) Enacted Aug. 17, 1991, P.L. 102–103, sec. 305(2), 105 Stat. 502.

DEFINITIONS

SEC. 911. As used in this title—

(1) the term "educational institution" means an institution of higher education, a local educational agency, and a State educational agency;

(2) the term "institution of higher education" has the same meaning given that term under section 1201(a) of the Higher Education Act of 1965;

(3) the term "local educational agency" has the same meaning given that term under section 1471(10) of the Elementary and Secondary Education Act of 1965;

(4) the term "instructional programming" means courses of instruction, and training courses, and materials for use in such instruction and training which have been prepared in audio and visual form on tape, disc, film, or live, and presented by means of telecommunications devices;

(5) the term "public broadcasting entity" has the same meaning given that term in section 397 of the Communications Act of 1934;

(6) the term "Secretary" means the Secretary of Education;

(7) the term "State educational agency" has the same meaning given that term under section 1471(16) of the Elementary and Secondary Education Act of 1965; and

(8) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Commonwealth of the Northern Mariana Islands.

(20 U.S.C. 4086) Enacted April 28, 1988, P.L. 100–297, sec. 2302, 102 Stat. 320; amended July 25, 1991, P.L. 102–73, sec. 802(c), 105 Stat. 361; amended Aug. 17, 1991, P.L. 102–103, sec. 305(1), 105 Stat. 502.

Part D of Title II of the Excellence in Mathematics, Science, and Engineering Act of 1990

(Public Law 101–589; 104 Stat. 2894)

PART D—GRANTS TO EDUCATIONAL AGENCIES FOR SYSTEMIC REFORM OF MATHEMATICS AND SCIENCE EDUCATION

SEC. 241. SYSTEMIC REFORM OF MATHEMATICS AND SCIENCE.

(a) In General.—The Director, in consultation with the Secretary, is authorized to make awards to States or State educational agencies for projects that implement system-wide improvement in elementary or secondary school mathematics and science education.

(b) Improvement Components.—Each project for which an award is made pursuant to subsection (a) shall include the following components:

(1) increased student achievement in mathematics and science;

(2) improvements in organizational structure and decision-making;

(3) modifications in the provision and allocation of resources regarding mathematics and science instruction;

(4) improvement in the recruitment, retention and continuing professional development of teachers and other educators who instruct mathematics and science;

(5) improved mathematics and science curriculum content and learning goals; and

(6) use of other Federal funds including funds provided for the Dwight D. Eisenhower Mathematics and Science Education Act.

(c) Special Rule.—In making awards pursuant to subsection (a), the Director shall—

(1) to the extent practicable, ensure an equitable geographic distribution of such awards; and

(2) give priority to States or State educational agencies whose improvement plans place a strong emphasis on increasing the academic achievement of females and minority students in mathematics and science.

Public Law 95–134

(Consolidated Grants to Insular Areas)

An Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE V

SEC. 501. In order to minimize the burden caused by existing application and reporting procedures for certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands (hereafter referred to as "Insular Areas") it is hereby declared to be the policy of the Congress, notwithstanding any provisions of law to the contrary, that:

(a) Any department or agency of the Government of the United States which administers any Act of Congress which specifically provides for making grants to any Insular Area under which payments received may be used by such Insular Area only for certain specified purposes (other than direct payments to classes of individuals) may, acting through appropriate administrative authorities of such department or agency, consolidate any or all grants made to such area for any fiscal year or years.

(b) Any consolidated grant for any insular area shall not be less than the sum of all grants which such area would otherwise be entitled to receive for such year.

(c) The funds received under a consolidated grant shall be expended in furtherance of the programs and purposes authorized for any of the grants which are being consolidated, which are authorized under any of the Acts administered by the department or agency making the grant, and which would be applicable to grants for such programs and purposes in the absence of the consolidation, but the Insular Areas shall determine the proportion of the funds granted which shall be allocated to such programs and purposes.

(d) Each department or agency making grants-in-aid shall, by regulations published in the Federal Register, provide the method by which any Insular Area may submit (i) a single application for a consolidated grant for any fiscal year period, but not more than one such application for a consolidated grant shall be required by any department or agency unless notice of such requirement is transmitted to the appropriate committees of the United States Congress together with a complete explanation of the necessity for requiring such additional applications and (ii) a single report to

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such department or agency with respect to each such consolidated grant: *Provided,* That nothing in this paragraph shall preclude such department or agency from providing adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving benefits from any consolidated grant. The administering authority of any department or agency, in its discretion, may (i) waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved and (ii) waive the requirement that any Insular Area submit an application or report in writing with respect to any consolidated grant.

(48 U.S.C. 1469a) Enacted Oct. 15, 1977, P.L. 95-134. sec. 501, 91 Stat. 1164, 1165; amended August 18, 1978, P.L. 95-348, sec. 9, 92 Stat. 495.-

Anti-Drug Abuse Act of 1986

TITLE IV—DEMAND REDUCTION

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(Subtitle C—Indians and Alaska Natives)

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SEC. 4212. INDIAN EDUCATION PROGRAMS.

(a) Pilot Programs.—The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools funded by the Bureau of Indian Affairs (subject to the approval of the local school board or contract school board) to determine the effectiveness of summer youth programs in furthering the purposes and goals of the Indian Alcohol and Substance Abuse Prevention Act of 1986. The Assistant Secretary shall defray all costs associated with the actual operation and support of the pilot programs in the school from funds appropriated for this section. For the pilot programs there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989, 1990, 1991, and 1992.

(b) Use of Funds.—Federal financial assistance made available to public or private schools because of the enrollment of Indian children pursuant to—

(1) the Act of April 16, 1934, as amended by the Indian Education Assistance Act (25 U.S.C. 452 et seq.),

(2) the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241aa et seq.), and

(3) the Indian Education Act (20 U.S.C. 3385),

may be used to support a program of instruction relating to alcohol and substance abuse prevention and treatment.

(25 U.S.C. 2432) Enacted Oct. 27, 1986, P.L. 99–570, 100 Stat. 3207–144; amended Nov. 18, 1988, P.L. 100–690, sec. 2206, 102 Stat. 4218.

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Handicapped Children's Protection Act of 1986

Public Law 99-372

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GAO STUDY OF ATTORNEYS' FEES PROVISION

SEC. 4. (a) The Comptroller General of the United States, through the General Accounting Office, shall conduct a study of the impact of the amendments to the Education of the Handicapped Act[1] made by section 2 of this Act. Not later than June 30, 1989, the Comptroller General shall submit a report containing the findings of such study to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate. The Comptroller General shall conduct a formal briefing for such Committees on the status of the study not later than March 1, 1988. Such report shall include the information described in subsection (b).

(b) The report authorized under subsection (a) shall include the following information:

(1) The number, in the aggregate and by State, of written decisions under sections 615 (b)(2) and (c) transmitted to State advisory panels under section 615(d)(4) for fiscal years 1984 through 1988, the prevailing party in each such decision, and the type of complaint. For fiscal year 1986, the report shall designate which decisions concern complaints filed after the date of the enactment of this Act.

(2) The number, in the aggregate and by State, of civil actions brought under section 615(e)(2), the prevailing party in each action, and the type of complaint for fiscal years 1984 through 1988. For fiscal year 1986 the report shall designate which decisions concern complaints filed after the date of enactment.

(3) Data, for a geographically representative selective sample of States, indicating (A) the specific amount of attorneys' fees, costs, and expenses awarded to the prevailing party, in each action and proceeding under section 615(e)(4)(B) from the date of the enactment of this Act through fiscal year 1988, and the range of such fees, costs, and expenses awarded in the actions and proceedings under such section, categorized by type of complaint and (B) for the same sample as in (A) the number of hours spent by personnel, including attorneys and consultants, involved in the action or proceeding, and expenses in-

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[1] Section 901 of Public Law 101-476 changed the short title of title VI of Public Law 91-230 from the "Education of the Handicapped Act" to the "Individuals with Disabilities Education Act". Such section further provided that any reference to the former shall be considered to be a reference to the "Individuals with Disabilities Education Act".

curred by the parents and the State educational agency and local educational agency.

(4) Data, for a geographically representative sample of States, on the experience of educational agencies in resolving complaints informally under section 615(b)(2), from the date of the enactment of this Act through fiscal year 1988.

(20 U.S.C. 1415 note) Enacted Aug. 5, 1986, P.L. 99–372, sec. 4, 100 Stat. 797.

EFFECTIVE DATE

SEC. 5. The amendment made by section 2 shall apply with respect to actions or proceedings brought under section 615(e) of the Education of the Handicapped Act[1] after July 3, 1984, and actions or proceedings brought prior to July 4, 1984, under such section which were pending on July 4, 1984.

(20 U.S.C. 1415 note) Enacted Aug. 5, 1986, P.L. 99–372, sec. 5, 100 Stat. 797–798.

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[1] Section 901 of Public Law 101–476 changed the short title of title VI of Public Law 91–230 from the "Education of the Handicapped Act" to the "Individuals with Disabilities Education Act". Such section further provided that any reference to the former shall be considered to be a reference to the "Individuals with Disabilities Education Act".

Fund for the Improvement and Reform of Schools and Teaching Act

(Part B of title III of Public Law 100–297)

PART B—FUND FOR THE IMPROVEMENT AND REFORM OF SCHOOLS AND TEACHING

SEC. 3201. SHORT TITLE.

This part may be cited as the "Fund for the Improvement and Reform of Schools and Teaching Act".

(20 U.S.C. 4801 note)

SEC. 3202. ESTABLISHMENT OF FUND.

There is established a Fund for the Improvement and Reform of Schools and Teaching.

(20 U.S.C. 4801)

Subpart 1—Grants for Schools and Teachers

SEC. 3211. FUND FOR THE IMPROVEMENT AND REFORM OF SCHOOLS AND TEACHING.

(a) GENERAL AUTHORITY.—The Secretary is authorized to make grants to, and enter into contracts with, State educational agencies, local educational agencies, institutions of higher education, nonprofit organizations, individual schools, consortia of such schools, and consortia of such schools and institutions, to improve educational opportunities for and the performance of elementary and secondary school students and teachers by—

(1) helping educationally disadvantaged or at risk children meet higher educational standards;

(2) providing incentives for improved performance;

(3) strengthening school leadership and teaching;

(4) promoting closer ties among school teachers, administrators, families and the local community;

(5) providing opportunities for teacher enrichment and other means to improve the professional status of teachers;

(6) encouraging projects that reallocate existing resources (both human and financial) to serve children better by refocusing priorities;

(7) allowing local schools to establish closer ties with an institution of higher education to increase educational achievement;

(8) increasing the number and quality of minority teachers;

(9) providing entry-year assistance to new teachers and administrators;

(10) improving the teacher certification process, especially for schools, school districts, or States facing serious shortages; and

(11) encouraging pride in schools by teaching students to be responsible for their school environment, involving students in the care and maintenance of their classrooms and promoting individual responsibility and involvement in civic activities.

(b) PRIORITY RULE.—The Secretary shall give priority to proposed projects that—

(1) will benefit students or schools with below average academic performance;

(2) will lead to increased access of all students to a high quality education; and

(3) develop or implement systems for providing incentives to schools, administrators, teachers, students, or others to make measurable progress toward specific goals of improved educational performance.

(c) ADMINISTRATIVE RULE.—The Secretary shall carry out the provisions of this part through the Board established under section 3231.

(20 U.S.C. 4811)

SEC. 3212. APPLICATIONS.

(a) CONTENTS OF APPLICATIONS.—(1)(A) For grants described under this subpart, each applicant shall, if relevant, describe how the program relates to the priorities listed in section 3211(b). Where appropriate, proposals shall contain a description of the incentive system described in section 3211(b)(3), including specific goals and timetables for progress toward such goals.

(B) For the purpose of this section, incentives may include financial rewards, regulatory waivers, open enrollment among schools, grants to schools for innovative projects, or other rewards for meeting specific goals.

(C) For the purpose of this section, the goals described in subparagraph (A) may include increased graduation rates, reduced dropout rates, increased attendance rates, increased student achievement, reduced rates of incidents of juvenile delinquency or vandalism, or other goals of educational improvement.

(2)(A) Each teacher and administrator desiring to receive a grant at the school level shall submit an application for school level projects involving an individual school or a consortium of schools. Each application shall contain assurances that the project will be carried out under the responsibility of a full-time teacher or school administrator.

(B) Each such application shall be reviewed by the appropriate local educational agency. The local educational agency shall act as the fiscal agent in administering the school's grant to the school, but funds must be expended at the school level.

(b) STATE EDUCATIONAL AGENCY REVIEW.—Each application for a grant under this subpart (other than an application from a State educational agency) shall be forwarded to the appropriate State educational agency for review and comment, if the State educational agency requests the opportunity for review. The State educational agency must complete its review of the application and comment to the Secretary within 30 calendar days of receipt.

(c) SPECIAL EVALUATION RULE.—In evaluating an application for a grant or contract under this subpart, the Secretary shall consider the extent to which the proposed project is likely to improve teaching and learning at the school level.

(20 U.S.C. 4812)

Subpart 2—Family-School Partnership

SEC. 3221. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) it has been clearly demonstrated that parent involvement is directly related to better student achievement, attitudes, and performance in school;

(2) demographics of the American family are changing to the degree that significant numbers of children attending school come from families with single parents, families in which both parents are employed outside the home, or where the primary caregiver is not the biological parent;

(3) the demographics mean that current approaches to developing and maintaining partnerships with educators in compensatory education programs require review and modification to make them more responsive to the needs of both families and schools; and

(4) effective approaches to more fully involving families as partners in their children's education should be encouraged as a matter of Federal policy.

(b) PURPOSE.—The purpose of this subpart is to encourage eligible local educational agencies to increase the involvement of families in the improvement of the educational achievement of their children in the preschool, elementary, and secondary schools within such agency.

(20 U.S.C. 4821)

SEC. 3222. ELIGIBLE AGENCY.

In order to be eligible to receive a grant under this subpart, a local educational agency must be eligible to receive a grant under section 1005 of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 4822)

SEC. 3223. PROGRAM AUTHORIZED.

(a) GENERAL AUTHORITY.—The Secretary, through the Fund, is authorized to make demonstration grants to eligible local educational agencies for the development of innovative, promising family-school educational partnership activities designed to—

(1) support the efforts of families, including training, to the maximum extent practicable, to work with children in the home to attain both the instructional objectives of the schools within eligible local educational agencies and instill positive attitudes about the importance of education;

(2) train teachers and other staff personnel involved in the program supported under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 to work effectively as

educational partners with the families of participating students;

(3) train families, teachers and other staff personnel in the schools within such agency to build an educational partnership between home and school; and

(4) evaluate how well family involvement activities of the schools within such agency are working, what barriers exist to greater participation, and what steps need to be taken to expand participation in such family involvement activities.

(b) USES OF FUNDS.—The activities and procedures for which grants may be made under this subpart may include—

(1) training programs for the family on the family's educational responsibilities and reasonable and necessary expenditures associated with the attendance of parents or guardians at training sessions;

(2) planning and development of new school procedures and practices to meet the changing demographic characteristics of the families of school-age children;

(3) planning and development of modifications of school procedures and practices necessary for the involvement of parents of special groups, including minorities, disadvantaged, gifted and talented, and students with handicaps;

(4) hiring, training, and use of educational personnel in eligible local educational agencies to coordinate family involvement activities and to foster communications among families, educators, and students;

(5) development and purchase by a local educational agency of educational materials where such materials are commercially unavailable to reinforce school learning at home and assistance in implementing other home-based education activities that reinforce and extend classroom instruction and student motivation; and

(6) securing technical assistance, including training, to design and carry out family involvement programs.

(c) PRIVATE SCHOOL STUDENTS.—An application may, consistent with the number of children enrolled in private elementary and secondary schools located in the school district of an eligible educational agency, provide for the participation of such children, their families and teachers.

(20 U.S.C. 4823)

Subpart 3—Administrative Provisions

SEC. 3231. BOARD AUTHORIZED.

(a) FUND FOR THE IMPROVEMENT AND REFORM OF SCHOOLS AND TEACHING BOARD ESTABLISHED.—(1) There is established the Fund Board.

(2)(A) The Board shall—

(i) advise the Secretary concerning developments in education that merit the attention of the Secretary;

(ii) identify promising initiatives to be supported under this part; and

(iii) advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, planning documents, guidelines, and procedures for grant competitions carried out by the Fund.

(B) The Secretary shall provide such information and assistance as may be necessary to enable the Board to carry out its functions under this part.

(3)(A) The Board shall be composed of 15 members and the Secretary. Appointed members of the Board shall be appointed from among individuals who have extensive backgrounds in the field of education and shall represent a broad range of viewpoints and experience.

(B)(i) The term of office of each member of the Board shall be 3 years, except that, subject to the provisions of paragraphs (4) and (5), the members first taking office shall serve as designated by the Secretary, one-third of the members for terms of 1 year, one-third of the members for terms of 2 years, and one-third of the members for terms of 3 years;

(ii) Any member appointed to fill a vacancy shall serve for the remainder of the term for which the predecessor of such member was appointed. No Board member may serve more than 2 consecutive terms.

(4) The initial membership of the Board shall be appointed by the Secretary after consultation with appropriate educational organizations and other interest groups.

(5) As vacancies occur, new members of the Board shall be appointed by the Secretary from among individuals who are nominated by the Board. The Board shall nominate at least 3 individuals for each vacancy.

(6) The Board shall elect a chairman and vice-chairman from among its membership.

(7) The Board shall meet at least 3 times each year. A meeting shall also be held whenever one-third of the Board members request in writing that a meeting be held. A majority of the Board shall constitute a quorum.

(b) DIRECTOR OF THE FUND.—(1) The Secretary shall appoint a Director of the Fund to serve a 4-year term. No individual may serve as Director for more than 8 years.

(2) The Director shall advise the Board about developments in education that merit the attention of the Board, identify promising initiatives, coordinate the work of the Fund with the work of the Fund for the Improvement of Postsecondary Education, and provide such information and assistance as may be necessary to enable the Board to carry out its functions. The Director may offer comments to the Board on any application to the Fund.

(3) The Director shall—

(A) consult with the Board on priorities for the improvement of education,

(B) design grant competitions,

(C) solicit proposals,

(D) administer grant competitions,

(E) review and prioritize proposals,

(F) monitor funded projects, and

(G) disseminate the results of successful projects.

(c) PRIORITIES RULE.—In January of every calendar year, the Board shall advise the Secretary and the Congress of the priorities of the Board for the improvement of education and the implications of the priorities for the Fund. The Secretary shall give careful consideration to the priorities set forth by the Board. By December 31 of each calendar year, the Director shall provide the Congress with a report for that year summarizing the projects funded for that year.

(d) REVIEW AND EVALUATION PROCEDURES.—The Director shall establish procedures for reviewing and evaluating grants and contracts made or entered into under this part. The procedures established under this subsection for reviewing grant applications or contracts for financial assistance under this Act may not be subject to any review outside of officials responsible for the administration of the Fund.

(e) PROPOSAL REVIEW.—In reviewing proposals, the Director shall consider the need for the proposed project and its plan of operation, educational value, budget and cost effectiveness, plan for evaluation, proposed impact, expected outcomes, potential transferability to other settings, and other factors as appropriate with respect to the goals and priorities of the Fund. The Secretary shall also consider, to the extent practicable, the geographic distribution of the projects selected for funding. The Secretary shall take appropriate steps to ensure that new applicants are encouraged to participate in any grant competition sponsored by the Fund for the Improvement and Reform of Schools and Teaching.

(f) PERSONNEL.—The Secretary may appoint for terms not to exceed 3 years, without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, not more than 7 technical employees to administer this part who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(20 U.S.C. 4831)

SEC. 3232. DISSEMINATION AND REPORTING.

(a) EXEMPLARY PROJECTS.—The Secretary shall take appropriate steps to ensure that exemplary projects that are developed with assistance furnished under this part are made available to institutions of higher education and State and local educational agencies. In carrying out this paragraph the Secretary and Director shall ensure that exemplary projects apply to the National Diffusion Network for dissemination through the procedures established by that program.

(b) REPORT.—The Secretary shall submit a final report to Congress not later than June 1, 1990. The report shall describe the programs assisted by this part, document the success of such programs in improving education, and make such recommendations as the Secretary deems appropriate.

(c) REPORT FOR CONTINUED FUNDING RULE.—As a condition to continue to receive funding after the first year of a multi-year project, the project administrator shall submit an annual report to describe the activities conducted during the preceding year and the progress that has been made toward reaching the goals described in its application, if applicable.

(20 U.S.C. 4832)

SEC. 3233. COORDINATION WITH THE FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION.

In order to facilitate coordination between the Fund and the Fund for the Improvement of Postsecondary Education, the Director of the Fund shall meet regularly with the Director of the Fund for the Improvement of Postsecondary Education. The Board of the Fund shall meet at least once each year with the Board of the Fund for the Improvement of Postsecondary Education to discuss priorities and projects to be funded.

(20 U.S.C. 4833)

Subpart 4—General Provisions

SEC. 3241. SPECIAL GRANT RULES.

(a) GRANT CONDITIONS.—(1) Federal funds paid under this part shall supplement, not supplant, other resources available to the grantee.

(2) Financial assistance made under this part is not intended to be used for the acquisition of capital equipment as a primary purpose.

(b) DISTRIBUTION OF FUNDS.—(1) At least 25 percent of the funds appropriated for the Fund in any fiscal year shall be used for grants to applicants described in section 3212(a)(2)(A).

(2) Grants to a single school as described in section 3212(a)(2)(A) may not be less than $5,000 nor more than $125,000 in any fiscal year.

(3) No grant may be made for more than a 3-year period.

(20 U.S.C. 4841)

SEC. 3242. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATIONS.—There are authorized to be appropriated to carry out the provisions of this part $30,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal years 1990, 1991, 1992, and 1993.

(b) RESERVATIONS.—

(1) The Secretary shall reserve one-third of the funds appropriated for activities under subpart 2 of this part.

(2) The Secretary shall reserve $150,000 from funds appropriated for activities authorized by section 3232.

(20 U.S.C. 4842)

SEC. 3243. DEFINITIONS.

For the purpose of this part—

(1) the term "at risk" means students who, because of learning deficiencies, lack of school readiness, limited English proficiency, poverty, educational or economic disadvantage, or physical or emotional handicapping conditions face greater risk of low educational achievement and have greater potential of becoming school dropouts;

(2) the term "Board" means the Fund Board established under section 3231;

(3) the term "Fund" means the Fund for the Improvement and Reform of Schools and Teaching established under section 3202; and

(4) the term "Secretary" means the Secretary of Education.

(20 U.S.C. 4843)

National Assessment of Educational Progress Improvement Act

(Part C of title III of Public Law 100–297)

PART C—NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

SEC. 3401. SHORT TITLE.

This part may be cited as the "National Assessment of Educational Progress Improvement Act".

(20 U.S.C. 1221)

SEC. 3402. STATEMENT OF PURPOSE.

The purpose of this part is to improve the effectiveness of our Nation's schools by making objective information about student performance in selected learning areas available to policymakers at the national, regional, State, and local levels. To enhance its utility, such information shall be both representative and comparable and shall be maintained in a manner that ensures the privacy of individual students and their families. It is not the purpose of this Act to authorize the collection or reporting of information on student attitudes or beliefs or on other matters that are not germane to the acquisition and analysis of information about academic achievement.

(20 U.S.C. 1221e–1 note)

SEC. 3403. NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS.

(a) GENERAL AUTHORITY.—Section 406 of the General Education Provisions Act (hereafter in this part referred to as "the Act" and as amended by section 3001 of this title) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following:

"(i)(1) With the advice of the National Assessment Governing Board established by paragraph (5)(a)(i), the Commissioner shall carry out, by grants, contracts, or cooperative agreements with qualified organizations, or consortia thereof, a National Assessment of Educational Progress. The National Assessment of Educational Progress shall be placed in the National Center for Education Statistics and shall report directly to the Commissioner for Educational Statistics. The purpose of the National Assessment is the assessment of the performance of children and adults in the basic skills of reading, mathematics, science, writing, history/geography, and other areas selected by the Board.

"(2)(A) The National Assessment shall provide a fair and accurate presentation of educational achievement in skills, abilities, and knowledge in reading, writing, mathematics, science, history/geography, and other areas specified by the Board, and shall use sampling techniques that produce data that are representative on a national and regional basis and on a State basis pursuant to subparagraphs (C)(i) and (C)(ii). In addition, the National Assessment shall—

"(i) collect and report data on a periodic basis, at least once every 2 years for reading and mathematics; at least once every 4 years for writing and science; and at least once every 6 years for history/geography and other subject areas selected by the Board;

"(ii) collect and report data every 2 years on students at ages 9, 13, and 17 and in grades 4, 8, and 12;

"(iii) report achievement data on a basis that ensures valid reliable trend reporting;

"(iv) include information on special groups.

"(B) In carrying out the provisions of subparagraph (A), the Secretary and the Board appointed under paragraph (5) shall assure that at least 1 of the subject matters in each of the 4 and 6 year cycles described in subparagraph (A)(i) will be included in each 2 year cycle Assessment.

"(C)(i) The National Assessment shall develop a trial mathematics assessment survey instrument for the eighth grade and shall conduct a demonstration of the instrument in 1990 in States which wish to participate, with the purpose of determining whether such an assessment yields valid, reliable State representative data.

"(ii) The National Assessment shall conduct a trial mathematics assessment for the fourth and eighth grades in 1992 and, pursuant to subparagraph (6)(D), shall develop a trial reading assessment to be administered in 1992 for the fourth grade in States which wish to participate, with the purpose of determining whether such an assessment yields valid, reliable State representative data.

"(iii) The National Assessment shall ensure that a representative sample of students participate in such assessments.

"(iv) No State may agree to participate in the demonstration described in this subsection without full knowledge of the process for consensus decisionmaking on objectives to be tested, required in paragraph (6)(E), and of assessment demonstration standards for sampling, test administration, test security, data collection, validation and reporting. States wishing to participate shall sign an agreement developed by the Commissioner. A participating State shall review and give permission for release of results from any test of its students administered as a part of this demonstration prior to the release of such data. Refusal by a State to release its data shall not restrict the reporting of data from other States that have approved the release of such data.

"(v) The Commissioner shall provide for an independent evaluation conducted by a nationally recognized organization (such as the National Academy of Sciences or the National Academy of Education) of the pilot programs to assess the feasibility and validity of assessments and the fairness and accuracy of the data they produce. The report shall also describe the technical problems encountered and a description about what was learned about how to best report data from the National Assessment of Educational Progress. The results of this report will be provided to the Congress and to States which participated in assessments pursuant to paragraph (C) (i) and (ii) within 18 months of the time such assessments were conducted.

"(D)(i) The National Assessment shall have the authority to develop and conduct, upon the direction of the Board and subject to the availability of appropriations, assessments of adult literacy.

"(3)(A) The National Assessment shall not collect any data that are not directly related to the appraisal of educational performance, achievements, and traditional demographic reporting variables, or to the fair and accurate presentation of such information.

"(B) The National Assessment shall provide technical assistance to States, localities, and other parties that desire to participate in the assessment to yield additional information described in paragraph (2).

"(4)(A) Except as provided in subparagraph (B), the public shall have access to all data, questions, and test instruments of the National Assessment.

"(B)(i) The Commissioner shall ensure that all personally identifiable information about students, their educational performance, and their families and that information with respect to individual schools remain confidential, in accordance with section 552a of title 5, United States Code.

"(ii) Notwithstanding any other provision of the law, the Secretary may decline to make available to the public for a period not to exceed 10 years following their initial use cognitive questions that the Secretary intends to reuse in the future.

"(C) The use of National Assessment test items and test data employed in the pilot program authorized in subsection (2)(C) to rank, compare, or otherwise evaluate individual students, schools, or school districts is prohibited.

"(5)(A)(i) There is established the National Assessment Governing Board (hereafter in this section referred to as the 'Board').

"(ii) The Board shall formulate the policy guidelines for the National Assessment.

"(B) The Board shall be appointed by the Secretary in accordance with this subparagraph and subparagraphs (C), (D), and (E). The Board shall be composed of—

"(i) two Governors, or former Governors, who shall not be members of the same political party;

"(ii) two State legislators, who shall not be members of the same political party;

"(iii) two chief State school officers;

"(iv) one superintendent of a local educational agency;

"(v) one member of a State board of education;

"(vi) one member of a local board of education;

"(vii) three classroom teachers representing the grade levels at which the National Assessment is conducted;

"(viii) one representative of business or industry;

"(ix) two curriculum specialists;

"(x) two testing and measurement experts;

"(xi) one nonpublic school administrator or policymaker;

"(xii) two school principals, one elementary and one secondary;

"(xiii) three additional members who are representatives of the general public, including parents.

The Assistant Secretary for Educational Research and Improvement shall serve as an ex officio member of the Board as a nonvoting member.

"(C)(i) The Secretary and the Board shall ensure at all times that the membership of the Board reflects regional, racial, gender and cultural balance and diversity and that it exercises its independent judgment, free from inappropriate influences and special interests.

"(ii) In the exercise of its functions, powers, and duties, the Board shall hire its own staff and shall be independent of the Secretary and the other offices and officers of the Department of Education.

"(iii) The Secretary may appoint, at the direction of the Board, for terms not to exceed 3 years, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, not more than 6 technical employees to administer this subsection who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(D)(i) The members of the Assessment Policy Committee, serving on the date of enactment of the National Assessment of Educational Progress Improvement Act, shall become members of the Board for the remainder of the terms of the appointment to the Assessment Policy Committee.

"(ii) To complete the initial membership of the Board, the Secretary shall appoint members of the Board as necessary in the categories described in subparagraph (B) for which there are no members continuing from the Assessment Policy Committee on the date of enactment of the National Assessment of Educational Progress Improvement Act. The Secretary shall appoint such members from among nominees furnished by the Governors, chief State school officers, education associations and organizations, the National Academy of Sciences, the National Academy of Education, parent organizations, and learned societies.

"(iii) As vacancies occur, new members of the Board shall be appointed by the Secretary from among individuals who are nominated by the Board after consultation with representatives of the groups listed in subparagraph (B). For each vacancy the Board shall nominate at least 3 individuals who, by reason of experience or training, are qualified in that particular Board vacancy.

"(E) Members of the Board appointed in accordance with this paragraph shall serve for terms not to exceed 4 years which shall be staggered, as determined by the Secretary, subject to the provisions of subparagraph (D)(i). Any appointed member of the Board who changes status under subparagraph (B) during the term of the appointment of the member may continue to serve as a member until the expiration of that term.

"(6)(A) In carrying out its functions under this subsection, the Board shall be responsible for—

"(i) selecting subject areas to be assessed (consistent with paragraph (2)(A));

"(ii) identifying appropriate achievement goals for each age and grade in each subject area to be tested under the National Assessment;

"(iii) developing assessment objectives;

"(iv) developing test specifications;

"(v) designing the methodology of the assessment;

"(vi) developing guidelines and standards for analysis plans and for reporting and disseminating results;

"(vii) developing standards and procedures for interstate, regional and national comparisons; and

"(viii) taking appropriate actions needed to improve the form and use of the National Assessment.

"(B) The Board may delegate any functions described in subparagraph (A) to its staff.

"(C) The Board shall have final authority on the appropriateness of cognitive items.

"(D) The Board shall take steps to ensure that all items selected for use in the National Assessment are free from racial, cultural, gender, or regional bias.

"(E) Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, local school administrators, parents and concerned members of the general public.

"(F) The Secretary shall report to the Board at regular intervals of the Department's action to implement the decisions of the Board.

"(G) Any activity of the Board or of the organization described in paragraph (1), shall be subject to the provisions of this subsection.

"(7)(A) Not to exceed 10 percent of the funds available for this subsection may be used for administrative expenses (including staff, consultants and contracts authorized by the Board) and to carry out the functions described in paragraph (6)(A).

"(B) For the purposes of its administrative functions, the Board shall have the authorities authorized by the Federal Advisory Committee Act and shall be subject to the open meeting provisions of that law.

"(8)(A) Participation in the National and Regional Assessments by State and local educational agencies shall be voluntary.

"(B) Participation in assessments made on a State basis shall be voluntary. The Secretary shall enter into an agreement with any State which desires to carry out an assessment for the State under this subsection. Each such agreement shall contain provisions designed to assure—

"(i) that the State will participate in the assessment;

"(ii) that the State will pay from non-Federal sources the non-Federal share of participation; and

"(iii) that the State agrees with the terms and conditions specified in subsection (a)(2)(C)(iv).

"(C)(i) For each fiscal year, the non-Federal share for the purpose of clause (ii) of subparagraph (B) shall be the cost of conducting the assessment in the State including the cost of administering the assessment at the school level for all schools in the State sample and the cost of coordination within the State.

"(ii) The non-Federal share of payments under this paragraph may be in cash or in kind.

"(9)(A) The Commissioner shall provide for continuing reviews of the National Assessment, including validation studies by the National Center for Education Statistics and solicitation of public comment on the conduct and usefulness of the National Assessment. The Secretary shall report to the Congress, the President, and the Nation on the findings and recommendations of such reviews. The Commissioner shall consider the findings and recommendations in designing the competition to select the organization through which the Office carries out the National Assessment.

"(B) The Commissioner shall, not later than 6 months after the date of enactment of the National Assessment of Educational Progress Improvement Act, publish a report setting forth plans for the collection of data for the 1990 assessment and plans for including other subject areas in the 1992 and later assessments. The report shall include methods by which the results of the National Assessment of Educational Progress may be reported so that the results are more readily available and more easily understood by educators, policymakers, and the general public, and methods by which items will be reviewed to identify and exclude items which reflect racial, cultural, gender, or regional bias. The report shall be developed after consultation with educators, State education officials, members of the Board appointed under paragraph (5), and the general public.

"(C) The report required by this paragraph shall be submitted to the Congress and made available to the public. The appropriate authorizing committees of the Congress may request the Secretary to modify the plan contained in the report. The Secretary shall take such actions as may be appropriate to carry out the recommendations contained in the report.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 405 of the Act is amended by striking out subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(c) RESERVATION OF FUNDS FOR ASSESSMENTS.—(1) Section 405(f)(1)(D) of the Act (as redesignated by subsection (b)(1)) is amended to read as follows:

> "(D) Not less than $9,500,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 through 1993, shall be available to carry out section 406(i) of this Act (relating to the National Assessment of Education Progress);".

(2) Section 405(f)(1)(E) of the Act (as redesignated by subsection (a)(1)) is amended by inserting a comma and "except for subsection (i) of that section," immediately after "Act".

Human Services Reauthorization Act of 1986

Public Law 99–425

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TITLE IX—BEGINNING READING INSTRUCTION STUDY AND LISTING REQUIRED

SEC. 901. STUDY AND LISTING REQUIRED.

(a) STUDY.—The Secretary of Education (hereinafter in this title referred to as the "Secretary") shall conduct a study in order to compile a complete list, by name, of beginning reading instruction programs and methods, including phonics, indicating—

(1) the average cost per pupil of such programs and methods; and

(2) whether such programs and methods do or do not present well-designed instruction as recommended in the report of the Commission on Reading entitled "Becoming a Nation of Readers".

The listing required by this section shall be written in such a way as to be understandable to the general public.

(b) PUBLIC COMMENT.—In carrying out the study required by this section, the Secretary shall solicit public comments on beginning reading programs and methods.

(c) REPORTS.—The Secretary shall prepare and submit to the Congress such interim reports of the study and listing as the Secretary deems advisable. The Secretary shall prepare and submit a final report containing the listing required by this subsection to the Congress not later than 12 months after the date of the enactment of this Act. The Secretary shall publicize and disseminate nationally the listing required by this section to the education community, parents, and other interested persons.

Enacted Sept. 30, 1986, P.L. 99–425, sec. 901, 100 Stat. 978.

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Education Council Act of 1991

(Public Law 102–62; 20 U.S.C. 1221–1 note)

AN ACT To authorize appropriations to establish a National Education Commission on Time and Learning and a National Council on Education Standards and Testing, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Education Council Act of 1991".

SEC. 2. TABLE OF CONTENTS.

The table of contents is as follows:

Sec. 1. Table of contents.

TITLE I—NATIONAL EDUCATION COMMISSION ON TIME AND LEARNING

Sec. 101. Short title.
Sec. 102. National Education Commission on Time and Learning.

TITLE II—NATIONAL WRITING PROJECT

Sec. 201. Findings.
Sec. 202. National Writing Project.

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TITLE IV—NATIONAL COUNCIL ON EDUCATION STANDARDS AND TESTING

Sec. 401. Short title.
Sec. 402. Purpose and findings.
Sec. 403. Establishment.
Sec. 404. Duties.
Sec. 405. Reports.
Sec. 406. Membership.
Sec. 407. Director and staff; experts and consultants.
Sec. 408. Powers of Council.
Sec. 409. Federal Advisory Committee Act.
Sec. 410. Authorization of Appropriations.
Sec. 411. Termination.

TITLE I—NATIONAL EDUCATION COMMISSION ON TIME AND LEARNING

Sec.[1] 101. SHORT TITLE.

This title may be cited as the "National Education Commission on Time and Learning Act".

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[1] So in original. Should be "SEC.".

SEC. 102. NATIONAL EDUCATION COMMISSION ON TIME AND LEARNING.

(a) ESTABLISHMENT.—There is hereby established a National Education Commission on Time and Learning (hereafter in this title referred to as the "Commission").

(b) MEMBERSHIP OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall consist of nine members, of whom—

(A) 3 members shall be appointed by the Secretary of Education (hereafter in this Act referred to as the "Secretary");

(B) 3 members shall be appointed by the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives; and

(C) 3 members shall be appointed by the President pro tempore of the Senate upon the recommendation of the majority leader and minority leader of the Senate.

(2) REQUIREMENTS.—

(A) After consultation among the appointing authorities, members of the Commission shall be appointed on the basis of exceptional education, training, or experience from among—

(i) the Nation's Governors;

(ii) individuals from the business community;

(iii) individuals who are engaged in the profession of teaching;

(iv) individuals engaged in school administration, members of school boards, and parents or representatives of parents or parent organizations;

(v) State officials directly responsible for education;

(vi) Federal officials responsible for education policy;

(vii) educational researchers with experience relevant to the Commission's work;

(viii) Members of Congress and State legislators; and

(ix) representatives of nonprofit organizations or foundations which work to expand educational opportunities for children outside of school hours.

(3) VACANCIES.—A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

(4) TERMS.—Members of the Commission shall be appointed to serve for the life of the Commission.

(5) COMPENSATION.—Each member of the Commission shall serve without compensation, but shall be allowed travel expenses including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, when engaged in the performance of Commission duties.

(6) ACTIVITY OF COMMISSION.—The Commission may begin to carry out its duties under this subsection when at least 5 members of the Commission have been appointed.

(c) FUNCTIONS OF THE COMMISSION.—

(1) STUDY.—The Commission shall examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, the extent and role of homework, how time is being used for academic subjects, year-round professional opportunities for teachers, and the use of school facilities for extended learning programs.

(2) REPORT.—The Commission shall submit a final report under subsection (d). The report shall include an analysis and recommendations concerning—

(A) the length of the academic day and the academic year in elementary and secondary schools throughout the United States and in schools of other nations;

(B) the time children spend in school learning academic subjects such as English, mathematics, science, history, and geography;

(C) the use of incentives for students to increase their educational achievement in available instruction time;

(D) how children spend their time outside school with particular attention to how much of that time can be considered "learning time" and how out-of-school activities affect intellectual development;

(E) the time children spend on homework, how much of that time is spent on academic subjects, the importance that parents and teachers attach to homework, and the extent to which homework contributes to student learning;

(F) year-round professional opportunities for teachers and how teachers can use their time to acquire knowledge and skills that will permit them to improve their performance and help raise the status of the profession;

(G) how school facilities are used for extended learning programs;

(H) the appropriate number of hours per day and days per year of instruction for United States public elementary and secondary schools;

(I) if appropriate, a model plan for adopting a longer academic day and academic year for use by United States elementary and secondary schools by the end of this decade, including recommendations regarding mechanisms to assist States, school districts, schools, and parents in making the transition from the current academic day and year to an academic day and year of a longer duration;

(J) suggestions for such changes in laws and regulations as may be required to facilitate States, school districts, and schools in adopting longer academic days and years; and

(K) an analysis and estimate of the additional costs, including the cost of increased teacher compensation, to States and local school districts if longer academic days and years are adopted.

(d) COMMISSION REPORT.—Not later than 2 years after the Commission concludes its first meeting, the Commission shall submit a final report to the Congress and the Secretary on the study and any recommendations required pursuant to the provisions of this section.

(e) Powers of the Commission.—

(1) Hearings.—The Commission may, for the purpose of carrying out this section, conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) Testimony; public hearings.—In carrying out this section, the Commission shall receive testimony and conduct public hearings in different geographic areas of the country, both urban and rural, to receive the reports, views, and analyses of a broad spectrum of experts and the public regarding the quality and adequacy of the time devoted to study and learning.

(3) Information.—The Commission may secure directly from any Federal agency such information, relevant to its functions, as may be necessary to enable the Commission to carry out this subsection. Upon request of the Chairman of the Commission, the head of the agency shall, to the extent permitted by law, furnish such information to the Commission.

(4) Gifts.—The Commission may accept, use, and dispose of gifts or donations of money, services, or property, for the purpose of aiding the work of the Commission.

(5) Use of mails.—The Commission may use the United States mails in the same manner and under the same conditions as the department and agencies of the United States.

(6) Support services.—The Secretary shall provide to the Commission on a reimbursable basis such reasonable administrative and support services as the Commission may request.

(f) Administrative Provisions.—

(1) Meetings.—The Commission shall meet on a regular basis, as necessary, at the call of the Chairman or a majority of its members.

(2) Quorum.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(3) Chairman and vice chairman.—

(A) The Chairman and Vice Chairman of the Commission shall be elected by and from the members of the Commission.

(B) The Commission shall appoint a staff director, who shall be paid at a rate not to exceed the maximum rate of basic pay under section 5376 of title 5, United States Code, and such professional and clerical personnel as may be reasonable and necessary to enable the Commission to carry out its functions without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates, except that no employee, other than the staff director, may be compensated at a rate to exceed the maximum rate applicable to level 15 of the General Schedule.

(4) OTHER FEDERAL PERSONNEL.—Upon request of the Chairman of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title. Such detail shall be without interruption or loss of civil service status or privilege.

(g) TERMINATION OF THE COMMISSION.—The Commission shall terminate 90 days after submitting the final report required by subsection (d).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of the fiscal years 1991, 1992, 1993, and 1994 to carry out the provisions of this title.

TITLE II—NATIONAL WRITING PROJECT

SEC. 201. FINDINGS.

The Congress finds that—

(1) the United States faces a crisis in writing in schools and in the workplace;

(2) only 25 percent of 11th grade students have adequate analytical writing skills;

(3) over the past two decades, universities and colleges across the country have reported increasing numbers of entering freshmen who are unable to write at a level equal to the demands of college work;

(4) American businesses and corporations are concerned about the limited writing skills of entry-level workers, and a growing number of executives are reporting that advancement was denied to them due to inadequate writing abilities;

(5) the writing problem has been magnified by the rapidly changing student populations in the Nation's schools and the growing number of students who are at risk because of limited English proficiency;

(6) most teachers in the United States elementary schools, secondary schools, and colleges, have not been trained to teach writing;

(7) since 1973, the only national program to address the writing problem in the Nation's schools has been the National Writing Project, a network of collaborative university-school programs whose goal is to improve the quality of student writing and the teaching of writing at all grade levels and to extend the uses of writing as a learning process through all disciplines;

(8) the National Writing Project offers summer and school year inservice teacher training programs and a dissemination network to inform and teach teachers of developments in the field of writing;

(9) the National Writing Project is a nationally recognized and honored nonprofit organization that recognizes that there are teachers in every region of the country who have developed successful methods for teaching writing and that such teachers can be trained and encouraged to train other teachers;

(10) the National Writing Project has become a model for programs in other academic fields;

(11) the National Writing Project teacher-teaching-teachers program identifies and promotes what is working in the classrooms of the Nation's best teachers;

(12) the National Writing Project teacher-teaching-teachers project is a positive program that celebrates good teaching practices and good teachers and through its work with schools increases the Nation's corps of successful classroom teachers;

(13) evaluations of the National Writing Project document the positive impact the project has had on improving the teaching of writing, student performance, and student thinking and learning ability;

(14) the National Writing Project programs offer career-long education to teachers, and teachers participating in the National Writing Project receive graduate academic credit;

(15) each year approximately 85,000 teachers voluntarily seek training through word of mouth endorsements from other teachers in National Writing Project intensive summer workshops and school-year inservice programs through one of the 141 regional sites located in 43 States, and in 4 sites that serve United States teachers teaching overseas;

(16) 250 National Writing Project sites are needed to establish regional sites to serve all teachers;

(17) 13 National Writing Project sites in 8 different States have been discontinued in 1988 due to lack of funding; and

(18) private foundation resources, although generous in the past, are inadequate to fund all of the National Writing Project sites needed and the future of the program is in jeopardy without secure financial support.

SEC. 202. NATIONAL WRITING PROJECT.

(a) AUTHORIZATION.—The Secretary is authorized to make a grant to the National Writing Project (hereafter in this section referred to as the "grantee"), a nonprofit educational organization which has as its primary purpose the improvement of the quality of student writing and learning, and the teaching of writing as a learning process in the Nation's classrooms—

(1) to support and promote the establishment of teacher training programs, including the dissemination of effective practices and research findings regarding the teaching of writing and administrative activities;

(2) to support classroom research on effective teaching practice and to document student performance; and

(3) to pay the Federal share of the cost of such programs.

(b) REQUIREMENTS OF GRANT.—The grant shall provide that—

(1) the grantee will enter into contracts with institutions of higher education or other nonprofit educational providers (hereafter in this section referred to as "contractors") under which the contractors will agree to establish, operate, and provide the non-Federal share of the cost of teacher training programs in effective approaches and processes for the teaching of writing;

(2) funds made available by the Secretary to the grantee pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and

operating teacher training programs as provided in paragraph (1); and

(3) the grantee will meet such other conditions and standards as the Secretary determines to be necessary to assure compliance with the provisions of this section and will provide such technical assistance as may be necessary to carry out the provisions of this section.

(c) TEACHER TRAINING PROGRAMS.—The teacher training programs authorized in subsection (a) shall—

(1) be conducted during the school year and during the summer months;

(2) train teachers who teach grades kindergarten through college;

(3) select teachers to become members of a National Writing Project teacher network whose members will conduct writing workshops for other teachers in the area served by each National Writing Project site; and

(4) encourage teachers from all disciplines to participate in such teacher training programs.

(d) FEDERAL SHARE.—

(1) IN GENERAL.—Except as provided in paragraph (2) or (3) and for purposes of subsection (a), the term "Federal share" means, with respect to the costs of teacher training programs authorized in subsection (a), 50 percent of such costs to the contractor.

(2) WAIVER.—The Secretary may waive the provisions of paragraph (1) on a case-by-case basis if the National Advisory Board described in subsection (f) determines, on the basis of financial need, that such waiver is necessary.

(3) MAXIMUM.—(A) The Federal share of the costs of teacher training programs conducted pursuant to subsection (a) may not exceed $40,000 for any one contractor, or $200,000 for a statewide program administered by any one contractor in at least 5 sites throughout the State.

(B) The grantee under section 202, or any school or institution of higher education that receives funds under this section shall not spend more than 10 percent of the Federal funds it receives under this section for administrative costs.

(4) SPECIAL RULE.—For the purposes of this subsection, the costs of teacher programs do not include the administrative costs, publication cost, or the cost of providing technical assistance to the grantee.

(e) CLASSROOM TEACHER GRANTS.—

(1) IN GENERAL.—The National Writing Project may reserve an amount not to exceed 5 percent of the amount appropriated pursuant to the authority of this section to make grants, on a competitive basis, to elementary and secondary school teachers to enable such teachers to—

(A) conduct classroom research;

(B) publish models of student writing;

(C) conduct research regarding effective practices to improve the teaching of writing; and

(D) conduct other activities to improve the teaching and uses of writing.

(2) SUPPLEMENT AND NOT SUPPLANT.—Grants awarded pursuant to paragraph (1) shall be used to supplement and not supplant State and local funds available for the purposes set forth in paragraph (1).

(3) MAXIMUM GRANT AMOUNT.—Each grant awarded pursuant to this subsection shall not exceed $2,000.

(f) NATIONAL ADVISORY BOARD.—

(1) ESTABLISHMENT.—The National Writing Project shall establish and operate a National Advisory Board.

(2) COMPOSITION.—The National Advisory Board established pursuant to paragraph (1) shall consist of—

(A) national educational leaders;

(B) leaders in the field of writing; and

(C) such other individuals as the National Writing Project deems necessary.

(3) DUTIES.—The National Advisory Board established pursuant to paragraph (1) shall—

(A) advise the National Writing Project on national issues related to student writing and the teaching of writing;

(B) review the activities and programs of the National Writing Project; and

(C) support the continued development of the National Writing Project.

(g) EVALUATION.—The Secretary shall reserve not more than $150,000 from the total combined amount appropriated pursuant to the authority of this section for fiscal years 1991, 1992, and 1993 to conduct an independent evaluation by grant or contract of the teacher training programs administered pursuant to this Act. Such evaluation shall specify the amount of funds expended by the National Writing Project and each contractor receiving assistance under this section for administrative costs. The results of such evaluation shall be made available to the appropriate committees of the Congress.

(h) RESEARCH AND DEVELOPMENT ACTIVITIES.—

(1) GRANTS AUTHORIZED.—From amounts available to carry out the provisions of this subsection, the Secretary, through the Office of Educational Research and Improvement, shall make grants to individuals and institutions of higher education to conduct research activities involving the teaching of writing.

(2) PRIORITY.—(A) In awarding grants pursuant to paragraph (1), the Secretary shall give priority to junior researchers.

(B) The Secretary shall award not less than 25 percent of the funds received pursuant to subsection (i)(2) to junior researchers.

(C) The Secretary shall make available to the National Writing Project and other national information dissemination networks the findings of the research conducted pursuant to the authority of paragraph (1).

(i) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for the grant to the National Writing Project, $10,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 and 1993 to carry out the provisions of this section.

(2) RESEARCH AND DEVELOPMENT.—There are authorized to be appropriated $500,000 for fiscal year 1991 to carry out the provisions of subsection (h).

(j) DEFINITIONS.—As used in this Act—

(1) the term "institution of higher education" has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965;

(2) the term "junior researcher" means a researcher at the assistant professor rank or the equivalent who has not previously received a Federal research grant; and

(3) the term "Secretary" means the Secretary of Education.

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TITLE IV—NATIONAL COUNCIL ON EDUCATION STANDARDS AND TESTING

SEC. 401. SHORT TITLE.

This title may be cited as the "National Council on Education Standards and Testing Act".

SEC. 402. PURPOSE AND FINDINGS.

(a PURPOSE.—The purpose of this title is to create a national council to provide advice on the desirability and feasibility of national standards and testing in education.

(b) FINDINGS.—The Congress finds that—

(1) organizations have begun developing national education standards for various subject areas and grade levels;

(2) groups have called for the expansion of national testing for school children;

(3) decisions regarding the desirability and feasibility of additional national testing should follow such decisions on national standards for education;

(4) efforts regarding national standards and testing should be undertaken with the broadest possible participation by the public; and

(5) a major national council is needed to assure broad participation by the public, to provide a focus for national debate on national education standards and testing, and to provide advice on the desirability and feasibility of developing national standards and testing.

SEC. 403. ESTABLISHMENT.

There is established a council to be known as the National Council on Education Standards and Testing (in this title referred to as the "Council").

SEC. 404. DUTIES.

The Council shall advise the American people on—

(1) whether suitable specific education standards should and can be established, such as world class standards, for—

(A) the knowledge and skills that students should possess and that schools should impart in order that American students leave grades 4, 8, and 12 demonstrating competency in challenging subject matter including English, mathematics, science, history, and geography; and

(B) every school in America to ensure that all students learn to use their minds well so that they will be prepared for responsible citizenship, further learning, and productive employment in our modern economy; and

(2) whether, while respecting State and local control of education, an appropriate system of voluntary national tests or examinations should and can be established, such as American achievement tests, that will provide prompt, accurate information to parents, educators, and policymakers on the progress being made toward the specific education standards by individual students, schools, school systems, States, and the Nation as a whole (if such standards can be established). The goal of any such system shall be to foster good teaching and learning, as well as to monitor performance.

SEC. 405. REPORTS.

(a) FINAL REPORT.—The Council shall, as soon as possible, but not later than December 31, 1991, submit a report to the Congress, the Secretary of Education, and the National Education Goals Panel that contains recommendations regarding long-term policies, structures, mechanisms, and other important considerations with respect to the objectives described in paragraphs (1) and (2) of section 404. A discussion of the validity, reliability, fairness, and costs of implementing a system of voluntary national tests or examinations shall also be included in such report.

(b) INTERIM REPORTS.—The Council may submit to the Congress, the Secretary of Education, and the National Education Goals Panel interim reports it considers appropriate.

SEC. 406. MEMBERSHIP.

(a) IN GENERAL.—The Council shall be composed of 32 members as follows:

(1) The Secretary of Education shall appoint 22 members to include at least one representative from each of the following:

(A) The Administration.

(B) The Commission on Achievement of Necessary Skills.

(C) The National Assessment Governing Board.

(D) State legislators.

(E) Chief State school officers.

(F) School administrators.

(G) Elementary or secondary school teachers.

(H) Institutions of higher education.

(I) Individuals with expertise in education standards and testing.

(J) National teacher organizations.

(2) The Chairperson or a designee of the National Education Goals Panel.

(3) The Governor designated to serve as Chairperson of the National Education Goals Panel for the year succeeding the year in which such panel is meeting (or a designee).

(4) The Speaker of the House of Representatives shall appoint 1 member (excluding Members of Congress).

(5) The minority leader of the House of Representatives shall appoint 1 member (excluding Members of Congress).

(6) The majority leader of the Senate shall appoint 1 member (excluding Members of Congress).

(7) The minority leader of the Senate shall appoint 1 member (excluding Members of Congress).

(8) The Chairman of the Committee on Education and Labor of the House or a designee.

(9) The ranking minority member of the Committee on Education and Labor of the House or a designee.

(10) The Chairman of the Committee on Labor and Human Resources of the Senate or a designee.

(11) The ranking minority member of the Committee on Labor and Human Resources of the Senate or a designee.

(b) VACANCIES.—A vacancy in the Council shall be filled in the manner in which the original appointment was made.

(c) TERM OF APPOINTMENT.—Members shall be appointed for the life of the Council.

(d) QUORUM.—17 members of the Council shall constitute a quorum.

(e) COCHAIRPERSONS.—The Chairperson of the National Education Goals Panel or a designee and the Governor designated to serve as the Chairperson for the succeeding year in which the panel is meeting (or a designee) shall serve as cochairpersons of the Council upon the date of the enactment of this title.

(f) COMPENSATION.—

(1) MEMBERS.—Except as provided in paragraph (2), members of the Council shall each be reimbursed at a rate not to exceed the rate of pay for level III of the Executive Schedule for each day (including travel time) during which they are engaged in the performance of duties vested in the Council.

(2) EXCEPTION.—Members of the Council who are fulltime officers or employees of the United States or Members of Congress shall receive no additional compensation by reason of their service on the Council

SEC. 407. DIRECTOR AND STAFF; EXPERT AND CONSULTANTS.

(a) DIRECTOR.—The cochairpersons of the Council shall, without regard to the provisions of title 5, United States Code relating to the appointment and compensation of officers or employees of the United States, appoint a Director to be paid at a rate not to exceed the rate of basic pay for level III of the Executive Schedule.

(b) APPOINTMENT AND PAY OF STAFF.—The cochairpersons may appoint personnel as they consider appropriate without regard to the provisions of title 5, United States Code, governing appointments to the competitive service. The staff of the Council may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates. The rate of pay of the staff of the Council shall not exceed the rate of basic pay for level V of the Executive Schedule.

(c) EXPERTS AND CONSULTANTS.—The Council may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(d) Staff of Federal Agencies.—Upon the request of the Council, the head of any department or agency of the United States is authorized to detail, on a reimbursable basis, any of the personnel of that agency to the Council to assist the Council in its duties under this title.

SEC. 408. POWERS OF COUNCIL.

(a) Hearings.—The Council may, for the purpose of this title, hold hearings, sit and act at the times and places, take testimony, and receive evidence, the Council considers appropriate. The Council may administer oaths or affirmations to witnesses appearing before it.

(b) Delegation of Authority.—Any member or agent of the Council may, if authorized by the Council, take any action the Council is authorized to take by this section.

(c) Information.—The Council may secure directly from any department or agency of the United States information necessary to enable it to carry out this title. Upon request of the Chairperson of the Council, the head of a department or agency shall furnish the information to the Council to the extent permitted by law.

(d) Gifts and Donations.—Subject to the regulations established under paragraph (2), the Council may accept, use, and dispose of gifts or donations of services or property.

(2) The Cochairpersons of the Council are authorized to establish regulations setting forth the criteria the Council shall use to determine whether the acceptance of gifts or donations of services under paragraph (1) would reflect unfavorably upon the ability of the Council or any employee to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity of or the appearance of the integrity of a government program or any official involved in such program.

(e) Mails.—The Council may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) Support Services.—The Secretary of Education shall provide to the Council, on a reimbursable basis, administrative support services as the Council may request.

SEC. 409. FEDERAL ADVISORY COMMITTEE ACT.

Sections 10 and 11 of the Federal Advisory Committee Act (5 U.S.C. App.) are the only sections of such Act that shall apply with respect to the Council.

SEC. 410. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $1,000,000 to carry out this title which shall remain available until expended or until the termination of the Council, whichever occurs first.

SEC. 411. TERMINATION.

The Council will cease to exist 90 days after submitting its final report.

PART IX—PUBLIC LIBRARIES AND OTHER PUBLIC PROPERTY

Library Services and Construction Act[1]

(Public Law 597, 84th Congress)

AN ACT To promote the further development of public library services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Library Services and Construction Act".

(20 U.S.C. 351, note) Enacted June 19, 1956, ch. 407, sec. 1, 70 Stat. 293; amended February 11, 1964, P.L. 88–269, sec. 10(a), 78 Stat. 16.

DECLARATION OF POLICY

SEC. 2. (a) It is the purpose of this Act to assist the States in the extension and improvement of public library services to areas and populations of the States which are without such services or to which such services are inadequate and to assist Indian tribes in planning and developing library services to meet their needs. It is the further purpose of this Act to assist with (1) public library construction and renovation; (2) improving State and local public library services for older Americans, and for handicapped, institutionalized, and other disadvantaged individuals; (3) strengthening State library administrative agencies; (4) promoting interlibrary cooperation and resource sharing among all types of libraries; (5) strengthening major urban resource libraries; and (6) increasing the capacity of libraries to keep up with rapidly changing information technology.

(b) Nothing in this Act shall be construed to interfere with State and local initiative and responsibility in the conduct of library services. The administration of libraries, the selection of personnel and library books and materials, and, insofar as consistent with the purposes of this Act, the determination of the best uses of the funds provided under this Act shall be reserved to the States and their local subdivisions and Indian tribes.

(20 U.S.C. 351) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1660; amended Oct. 7, 1977, P.L. 95–123, sec. 4(a), 91 Stat. 1095; amended Oct. 17, 1984, P.L. 98–480, secs. 102(a) and (b), 98 Stat. 2236.

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[1] Sec. 519 of P.L. 93–380 provides as follows:

"SEC. 519. (a) There is established, in the Office of Education, an Office of Libraries and Learning Resources (hereafter in this section referred to as the "Office"), through which the Commissioner shall administer all programs in the Office of Education related to assistance for, and encouragement of, libraries and information centers and education technology.

"(b) The Office shall be headed by a Director, to whom the Commissioner shall delegate his delegable functions with respect to the programs administered through the Office."

DEFINITIONS

SEC. 3. The following definitions shall apply to this Act:

(1) "Secretary" means the Secretary of Education.

(2) "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and for the purchase, lease, and installation of equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). Such term includes remodeling to meet standards under the Act of August 12, 1968, commonly known as the "Architectural Barriers Act of 1968", remodeling designed to ensure safe working environments and to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes information and building technologies, video and telecommunications equipment, machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(3) "Library service" means the performance of all activities of a library relating to the collection and organization of library materials and to making the materials and information of a library available to a clientele.

(4) "Library services for the physically handicapped" means the providing of library services, through public or other nonprofit libraries, agencies, or organizations, to physically handicapped persons (including the blind and other visually handicapped) certified by competent authority as unable to read or to use conventional printed materials as a result of physical limitations.

(5) "Public library" means a library that serves free of charge all residents of a community, district, or region, and receives its financial support in whole or in part from public funds. Such term also includes a research library, which, for the purposes of this sentence, means a library, which—

(A) makes its services available to the public free of charge;

(B) has extensive collections of books, manuscripts, and other materials suitable for scholarly research which are not available to the public through public libraries;

(C) engages in the dissemination of humanistic knowledge through services to readers, fellowships, educational and cultural programs, publication of significant research, and other activities; and

(D) is not an integral part of an institution of higher education.

(6) "Public library services" means library services furnished by a public library free of charge.

(7) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Is-

lands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.[1]

(8) "State Advisory Council on Libraries" means an advisory council for the purposes of clause (3) of section 6(a) of this Act which shall—

(A) be broadly representative of the public, school, academic, special, and institutional libraries, and libraries serving the handicapped, in the State and of persons using such libraries, including disadvantaged persons within the State;

(B) advise the State library administrative agency on the development of, and policy matters arising in the administration of, State plan; and

(C) assist the State library administrative agency in the evaluation of activities assisted under this Act;

(9) "State institutional library services" means the providing of books and other library materials, and of library services, to (A) inmates, patients, or residents of penal institutions, reformatories, residential training schools, orphanages, or general or special institutions or hospitals operated or substantially supported by the State, or (B) students in residential schools for the physically handicapped (including mentally retarded, hearing impaired, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired persons who by reason thereof require special education) operated or substantially supported by the State.

(10) "State library administrative agency" means the official agency of a State charged by law of that State with the extension and development of public library services throughout the State, which has adequate authority under law of the State to administer State plans in accordance with the provisions of this Act.

(11) "Basic State plan" means the document which gives assurances that the officially designated State library administrative agency has the fiscal and legal authority and capability to administer all aspects of this Act; provides assurances for establishing the State's policies, priorities, criteria, and procedures necessary to the implementation of all programs under provisions of this Act; and submits copies for approval as required by regulations promulgated by the Secretary.

(12) "Long-range program" means the comprehensive program of not less than three nor more than five years which identifies a State's library needs and sets forth the activities to be taken toward meeting the identified needs supported with the assistance of Federal funds made available under this Act. Such long-range programs shall be developed by the State library administrative agency and shall specify the State's policies, criteria, priorities, and procedures consistent with the Act as required by the regulations promulgated by the Secretary and shall be updated as library progress requires.

(13) "Annual program" means the projects which are developed and submitted to describe the specific activities to be carried out

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[1] Section 802(e)(1) of Public Law 102–73 amended section 3(g) by striking "or the Trust Territory of the Pacific Islands" and inserting "Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658)". The amendment probably should have been made to section 3(7).

annually toward achieving fulfillment of the long-range program. These annual programs shall be submitted in such detail as required by regulations promulgated by the Secretary.

(14) "Major urban resource library" means any public library located in a city having a population of 100,000 or more individuals, as determined by the Secretary.

(15) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(16) "Hawaiian native" means any individual any of whose ancestors were natives prior to 1778 in the area which now comprises the State of Hawaii.

(17) The term "handicapped individual" means an individual who is physically or mentally impaired, visually impaired, or hearing impaired.

(18) The term "network" means any local, statewide, regional, interstate, or international cooperative association of library entities which provide for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers for improved supplementary services for the clientele served by each type of library entity.

(19) The term "technology enhancement" means the acquisition, installation, maintenance, or replacement, of substantial technological equipment (including library bibliographic automation equipment) necessary to provide access to information in electronic and other formats made possible by new information and communications technologies.

(20) The term "educationally disadvantaged adult" has the meaning given that term in section 312(3)(A) of the Adult Education Act of 1988 (20 U.S.C. 2101a).

(21) The term "adult with limited literacy skills" means an adult whose minimal skills in reading, writing, or computation or in performing basic arithmetical computations preclude the individual from functioning in society without assistance from others.

(20 U.S.C. 351a) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1660; amended October 19, 1973, P.L. 93–133, sec. 4(a), 87 Stat. 466; amended Oct. 7, 1977, P.L. 95–123, sec. 4(b), 91 Stat. 1095; amended Oct. 17, 1984, P.L. 98–480, secs. 103(a) and (b), 98 Stat.; amended Nov. 22, 1985, P.L. 99–159, 99 Stat. 902; amended Mar. 15, 1990, P.L. 101–254, secs. 2, 16(a), 23(b), 104 Stat. 101, 105 and 113; amended July 25, 1991, P.L. 102–73, sec. 802(e)(1), 105 Stat. 361.

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 4. (a) There are authorized to be appropriated—

(1) for the purpose of making grants as provided in title I, $100,000,000 for fiscal year 1990 and such sums as may be necessary for each of the 4 succeeding fiscal years;

(2) for the purpose of making grants as provided in title II, $55,000,000 for fiscal year 1990 and such sums as may be necessary for each of the 4 succeeding fiscal years;

(3) for the purpose of making grants as provided in title III, $35,000,000 for fiscal year 1990 and such sums as may be necessary for each of the 4 succeeding fiscal years;

(4) for the purpose of making grants as provided in title V, $1,000,000 for fiscal year 1990 and such sums as may be necessary for each of the 4 succeeding fiscal years;

(5) for the purpose of making grants as provided in title VI, $10,000,000 for fiscal year 1990 and such sums as may be necessary for each of the 4 succeeding fiscal years;

(6) for the purpose of activities as provided in title VII, $500,000 for fiscal year 1990 and such sums as may be necessary for each of the 4 succeeding fiscal years; and

(7) for the purpose of making grants as provided in title VIII, $6,000,000 for fiscal year 1990 and such sums as may be necessary for each of the 4 succeeding fiscal years, except that no amounts are authorized to be appropriated under this paragraph for any fiscal year unless the total amount appropriated pursuant to paragraphs (1), (2), and (3) for such fiscal year equals or exceeds sum[1] of the total amount appropriated pursuant to such paragraphs for the preceding fiscal year, plus 4 percent of such total amount.

There shall be available for the purpose of making grants under title IV for each of the fiscal years 1990, 1991, 1992, 1993, and 1994, 1.5 percent of the amount appropriated pursuant to each of paragraphs (1), (2), and (3) for each such fiscal year. There shall be available for the purpose of making grants under section 5(d) for such fiscal years 0.5 percent of the amount appropriated pursuant to each of such paragraphs for each such fiscal year.

(b) Notwithstanding any other provision of law, unless enacted in express limitation of the provisions of this subsection, any sums appropriated pursuant to subsection (a) shall (1), in the case of sums appropriated pursuant to paragraphs (1) and (3) thereof, be available for obligation and expenditure for the period of time specified in the Act making such appropriation, and (2), in the case of sums appropriated pursuant to paragraph (2) thereof, subject to regulations of the Secretary promulgated in carrying out the provisions of section 5(b), be available for obligation and expenditure for the year specified in the Appropriation Act and is authorized to remain available until expended.

(c)(1) For the purpose of affording adequate notice of funding available under this Act, appropriations under this Act are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are first available for obligation.

(2) In order to effect a transition to the advance funding method of timing appropriation action, the provisions of this subsection shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropria-

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[1] So in original. Probably should be "the sum".

tion Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(20 U.S.C. 351b) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1662; amended May 3, 1973, P.L. 93–29, sec. 801, 87 Stat. 59; amended Oct. 7, 1977, P.L. 95–123, sec. 2, 91 Stat. 1095; amended Oct. 17, 1984, P.L. 98–480, secs. 103(b), 4(a) and (b), 98 Stat. 2237; amended Oct. 31, 1988, P.L. 100–569, sec. 101, 102 Stat. 2862; amended Mar. 15, 1990, P.L. 101–254 sec. 4, 104 Stat. 101.

ALLOTMENTS TO STATES AND INDIAN TRIBES

SEC. 5. (a)(1) From the sums appropriated pursuant to clause (1), (2), or (3) of section 4(a) for any fiscal year, the Secretary shall allot the minimum allotment, as determined under paragraph (3) of this subsection, to each State. Any sums remaining after minimum allotments have been made shall be allotted in the manner set forth in paragraph (2) of this subsection.

(2) From the remainder of any sums appropriated pursuant to clause (1), (2), or (3) of section 4(a) for any fiscal year, the Secretary shall allot to each State such part of such remainder as the population of the State bears to the population of all the States.

(3) For the purposes of this subsection, the "minimum allotment" shall be—

(A) with respect to appropriations for the purposes of title I, $200,000 for each State, except that it shall be $40,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658);

(B) with respect to appropriations for the purposes of title II, $100,000 for each State, except that it shall be $20,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658); and

(C) with respect to appropriations for the purposes of title III, $40,000 for each State, except that it shall be $10,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658).

If the sums appropriated pursuant to clause (1), (2), or (3) of section 4(a) for any fiscal year are insufficient to fully satisfy the aggregate of the minimum allotments for that purpose, each of such minimum allotments shall be reduced ratably.

(4) The population of each State and of all the States shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

(b) The amount of any State's allotment under subsection (a) for any fiscal year from any appropriation made pursuant to clause (1), (2), or (3) of section 4(a) which the Secretary deems will not be required for the period and the purpose for which such allotment is available for carrying out the State's annual program shall be available for reallotment from time to time on such dates during such year as the Secretary shall fix. Such amount shall be available for reallotment to other States in proportion to the original allotments for such year to such States under subsection (a) but with such proportionate amount for any of such other State being reduced to the extent that if it exceeds the amount which the Secretary estimates the State needs and will be able to use for such period of time for which the original allotments were made and the total of such reductions shall be similarly reallotted among the States not suffering such a reduction. Any amount reallotted to a State under this subsection for any fiscal year shall be deemed to be a part of its allotment for such year pursuant to subsection (a).

(c)(1) From one-half of the sums available pursuant to the second sentence of section 4(a) for any fiscal year, the Secretary shall allot an equal amount to each Indian tribe that submits an approved application under section 403.

(2) From the remaining one-half of the sums available pursuant to such second sentence, the Secretary shall make allocations to Indian tribes that (A) are receiving an allocation under paragraph (1) of this subsection for such fiscal year; and (B) have submitted approved applications under section 404.

(3) In making allocations under paragraph (2)—

(A) no funds shall be allocated to an Indian tribe unless such funds will be administered by a librarian; and

(B) the Secretary shall take into account the needs of Indian tribes for such allocations to carry out the activities described in section 402(b).

(4) In making allocations under this subsection, the Secretary shall take such actions as may be necessary to prevent an allocation from being received to serve the same population by any 2 or more of the following entities (as defined in or established pursuant to the Alaskan Native Claims Settlement Act): an Alaskan native village, a regional corporation, or a village corporation.

(d)(1) From the sums available pursuant to the last sentence of section 4(a) for any fiscal year, the Secretary shall make grants to organizations primarily serving and representing Hawaiian natives that are recognized by the Governor of the State of Hawaii.

(2) Grants under this subsection shall be made on the basis of applications and plans submitted by such organizations that are consistent with the requirements imposed pursuant to sections 402(b), 403 and 404. Funds made available by grants under this subsection may be used for the purposes specified in clauses (1) through (8) of section 402(a), to contract to provide public library services to Native Hawaiians, and to carry out any other activities authorized under this sentence by contract. Section 402(c) shall apply with respect to the cultural materials of Hawaiian natives. The Secretary shall issue criteria for the approval of applications and plans but the criteria may not include an allotment formula and may not contain a matching of funds requirement.

(20 U.S.C. 351c) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1662; amended May 3, 1973, P.L. 93–29, sec. 801, 87 Stat. 59; amended Oct. 17, 1984, P.L. 98–480, secs. 103(b) and 105 98 Stat. 2237, 2238; amended Nov. 22, 1985, P.L. 99–159, 99 Stat. 902; amended Mar. 15, 1990, P.L. 101–254, secs. 4(a), and 22(b), 104 Stat. 102, 107; amended July 25, 1991, P.L. 102–73, sec. 802(e)(2), 105 Stat. 361.

PLANS AND PROGRAMS

SEC. 6. (a) Any State desiring to receive its allotment for any purpose under this Act for any fiscal year shall (1) have in effect for such fiscal year a basic State plan as defined in section 3(11) and meeting the requirements set forth in subsection (b), (2) submit an annual program as defined in section 3(13) for the purposes for which allotments are desired, meeting the appropriate requirements set forth in titles I, II, and III and shall submit (no later than July 1, 1972) a long-range program as defined in section 3(12) for carrying out the purposes of this Act as specified in subsection (d), and (3) establish a State Advisory Council on Libraries which meets the requirements of section 3(8).

(b) A basic State plan under this Act shall—

(1) provide for the administration, or supervision of the administration, of the programs authorized by this Act by the State library administrative agency;

(2) provide that any funds paid to the State in accordance with a long-range program and an annual program shall be expended solely for the purposes for which funds have been authorized and appropriated and that such fiscal control and fund accounting procedures have been adopted as may be necessary to assure proper disbursement of, and account for, Federal funds paid to the State (including any such funds paid by the State to any other agency) under this Act;

(3) provide satisfactory assurance that the State agency administering the plan (A) will make such reports, in such form and containing such information, as the Secretary may reasonably require to carry out his functions under this Act and to determine the extent to which funds provided under this Act have been effective in carrying out its purposes, including reports of evaluations made under the State plans, and (B) will keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports;

(4) provide assurances that libraries within the State that receive funds under this Act shall not discriminate on the basis of race, religion, age, gender, national origin, or handicapping condition in providing space for public meetings; and

(5) provide that priority will be given to programs and projects—

(A) that improve access to public library resources and services for the least served populations in the State, including programs for individuals with limited English-speaking proficiency (as defined in section 703(a) of the Bilingual Education Act) or handicapping conditions, and programs and projects in urban and rural areas;

(B) that serve the elderly;

(C) that are designed to combat illiteracy; and

(D) that increase services and access to services through effective use of technology.

(c)(1) The Secretary shall not approve any basic State plan pursuant to this Act for any fiscal year unless—

(A) the plan fulfills the conditions specified in section 3(11) and subsection (b) of this section and the appropriate titles of this Act;

(B) he has made specific findings as to the compliance of such plan with requirements of this Act and he is satisfied that adequate procedures are subscribed to therein insure that any assurances and provisions of such plan will be carried out.

(2) The State plan shall be made public as finally approved.

(3) The Secretary shall not finally disapprove any basic State plan submitted pursuant to subsection (a)(1), or any modification thereof, without first affording the State reasonable notice and opportunity for hearing.

(d) The long-range program of any State for carrying out the purposes of this Act shall be developed in consultation with the Secretary and shall—

(1) set forth a program under which the funds received by the State under the programs authorized by this Act will be used to carry out a long-range program of library services, construction, and interlibrary cooperation and resource sharing covering a period of not less than three nor more than five years;

(2) be annually reviewed and revised in accordance with changing needs for assistance under this Act and the results of the evaluation and surveys of the State library administrative agency;

(3) set forth policies and procedures (A) for the periodic evaluation of the effectiveness of programs and projects supported under this Act, and (B) for appropriate dissemination of the results of such evaluations and other information pertaining to such programs or projects; and

(4) set forth effective policies and procedures for the coordination of programs and projects supported under this Act with library programs and projects operated by institutions of higher education or local elementary or secondary schools and with other public or private library services programs.

Such program shall be developed with advice of the State Advisory council and in consultation with the Secretary and shall be made public as it is finally adopted.

(e) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency administering a program submitted under this Act, finds—

(1) that the program has been so changed that it no longer complies with the provisions of this Act, or

(2) that in the administration of the program there is a failure to comply substantially with any such provisions or with any assurance or other provision contained in the basic State plan,

then, until he is satisfied that there is no longer any such failure to comply, after appropriate notice to such State agency, he shall make no further payments to the State under this Act or shall limit payments to programs or projects under, or parts of, the programs not affected by the failure, or shall require that payments by such State agency under this Act shall be limited to local or other public library agencies not affected by the failure.

(f)(1) If any State is dissatisfied with the Secretary's final action with respect to the approval of a plan submitted under this Act or with his final action under subsection (e) such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon take new or modified findings of fact and may modify his previous action, and shall certify to the court the record of further proceedings.

(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(g)(1) Any Indian tribe desiring to receive its allotment under section 5(c)(1) shall submit an application to the Secretary in accordance with section 403.

(2) Any Indian tribe desiring to receive an additional allocation under section 5(c)(2) in the same fiscal year in which it has received an allocation under section 5(c)(1) shall submit a plan in accordance with section 404.

(h) The Secretary shall coordinate programs under titles V and VI of this Act with the programs assisted by titles I, II, and III of this Act, and shall provide to the head of the State library administrative agency the opportunity to comment on any application for a grant under title V or VI of this Act prior to the awarding of the grant, in order to assure that such grants from the Secretary are for purposes consistent with the long-range program required under subsection (d) of this section.

(20 U.S.C. 351d) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1663; amended Aug. 21, 1974, P.L. 93–380, sec. 841(b), 88 Stat. 609, 610; amended Oct. 17, 1984, P.L. 98–480, secs. 103(b) and 106, 98 Stat. 2237, 2239; amended Nov. 22, 1985, P.L. 99–159, 99 Stat. 903; amended Mar. 15, 1990, P.L. 100–254, secs. 4(b), 5, and 6, 104 Stat. 103.

PAYMENTS

SEC. 7. (a) From the allotments available therefor under section 5 from appropriations pursuant to clause (1), (2), or (3) of section 4(a), the Secretary shall pay to each State which has a basic State plan approved under section 6(a)(1), an annual program and a long-range program as defined in sections 3 (12) and (13) an amount equal to the Federal share of the total sums expended by the State and its political subdivisions in carrying out such plan, except that no payments shall be made from appropriations pursuant to such paragraph (1) for the purposes of title I to any State (other than Palau (until the Compact of Free Association with

Palau takes effect pursuant to section 101(a) of Public Law 99-658)) for any fiscal year unless the Secretary determines that—

(1) there will be available from State and local sources for expenditure under the programs, during the fiscal year for which the allotment is made, an amount that equals or exceeds the amount required to provide the State percentage as required by subsection (b); and

(2)(A) there will be available for expenditure for State aid to public libraries and library systems, during the fiscal year for which the allotment is made, an aggregate amount equal to 90 percent of the amount actually expended for such purposes in the second preceding fiscal year; and

(B) there will be available for expenditure, during the fiscal year for which the allotment is made, for the State library administrative agency, or for the part thereof charged by State law with the extension and development of public library services throughout the State, an aggregate amount equal to 90 percent of the amount actually expended for such purpose in the second preceding fiscal year.

The Secretary may, in accordance with regulations, waive the requirements of paragraph (2) of this subsection, if the Secretary determines that the application of such paragraph would be unjust or unreasonable in the light of exceptional extenuating circumstances.

(b)(1) For the purpose of this section, the "Federal share" for any State shall be, except as is provided otherwise in title III, 100 per centum less the State percentage, and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of all the States (excluding Puerto Rico, Guam, American Samoa, and the Northern Mariana Islands[1] the Virgin Islands, the Commonwealth of the Northern Mariana Islands and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658)), except that (A) the Federal share shall in no case be more than 66 per centum, or less than 33 per centum, and (B) the Federal share for Puerto Rico, Guam, American Samoa, and the Northern Mariana Islands and the Virgin Islands shall be 66 per centum, and (C) the Federal share for the Trust Territory of the Pacific Islands shall be 100 per centum.

(2) The "Federal share" for each State shall be promulgated by the Secretary within sixty days after the beginning of the fiscal year ending June 30, 1971, and of every second fiscal year thereafter, on the basis of the average per capita incomes of each of the States and of all the States (excluding Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Commonwealth of the Northern Mariana Islands and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658)), for the three most recent consecutive years for which satisfactory data are available to him from the Department of Commerce. Such promulgation shall be

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[1] So in law. Apparent intention of section 107(4) of the Library Services and Construction Act was to insert reference to Northern Mariana Islands after both references to American Samoa.

conclusive for each of the two fiscal years beginning after the promulgation.

(c) From the sums available pursuant to the second sentence of section 4(a), the Secretary shall pay to each Indian tribe which has an approved application under section 403 an amount equal to such tribe's allotment under section 5(c)(1) and shall pay to each Indian tribe which has an approved plan under section 404 an amount equal to such tribe's additional allocation under section 6(g)(2), except that such additional allocation shall not exceed 80 percent of the cost of carrying out such plan.

(20 U.S.C. 351e) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1665; amended Oct. 17, 1984, P.L. 98–480, secs. 103(b) and 107, 98 Stat. 2237, 2289; amended Mar. 15, 1990, P.L. 101–254, sec. 7(a), 104 Stat.103; amended July 25, 1991,P.L. 102–73, sec. 802(e)(4), 105 Stat. 362.

ADMINISTRATIVE COSTS

SEC. 8. A State may expend funds received under titles I and II for administrative costs in connection with programs and activities carried out under titles I, II, and III, but such administrative expenditures under such titles[1] for any fiscal year may not exceed the greater of (1) 6 per centum of the sum of the amounts allotted to such State under such titles for such fiscal year, or (2) $60,000.

(20 U.S.C. 351f) Enacted Oct. 7, 1977, P.L. 95–123, sec. 3(a), 91 Stat. 1095; amended Oct. 17, 1984, P.L. 98–480, sec. 108, 98 Stat. 2240.

EDUCATION RESEARCH LIBRARY

SEC. 9. None of the activities or functions of the Department of Education Research Library which are utilized, directly or indirectly, by the Secretary in carrying out this Act and which were not performed by contractors as of July 26, 1989, shall be contracted out or otherwise transferred from the Federal Government before September 30, 1991, unless such transfer is expressly authorized by statute, or unless the value of all work performed under the contract and related contracts in each fiscal year does not exceed $50,000.

(20 U.S.C. 351g) Enacted Mar. 15, 1990, P.L. 101–254, sec. 8(a), 104 Stat. 104.

TITLE I—PUBLIC LIBRARY SERVICES

GRANTS TO STATES FOR PUBLIC LIBRARY SERVICES

SEC. 101. The Secretary shall carry out a program of making grants from sums appropriated pursuant to section 4(a)(1) to States which have approved basic State plans under section 6 and have submitted annual programs under section 103—

(1) for the extension of public library services to areas and populations without such services and the improvement of such services to areas and populations to ensure that such services are adequate to meet user needs and to make library services accessible to individuals who, by reason of distance, residence, handicap, age, literacy level, or other disadvantage, are unable

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[1] P.L. 99–159, sec. 303(a) enacted the following correction of administrative cost misinterpretation: "[1] The references in section 8 of the Act (20 U.S.C. 351f) to 'such titles' mean, and shall be construed as meaning, the immediately preceding reference to 'titles I, II, and III'."

to receive the benefits of public library services regularly made available to the public;

(2) for adapting public library services to meet particular needs of individuals within the States;

(3) for assisting libraries to serve as community information referral centers;

(4) for assisting libraries in providing literacy programs for adults and school dropouts in cooperation with other agencies and organizations, if appropriate;

(5) for assisting libraries in developing intergenerational library programs that will match older adult volunteers with libraries interested in developing after school[1] literacy and reading skills programs for unsupervised school children during afterschool hours;

(6) for assisting libraries in providing mobile library services and programs to child-care providers or child-care centers which are licensed or certified by the State, or otherwise meet the requirements of State law;

(7) to establish and support model library literacy centers, coordinated by the State library administrative agency with other interested State agencies and nonprofit organizations to reduce the number of functionally illiterate individuals and to help them reach full employment;

(8) for assisting libraries in providing and displaying educational materials, and conducting community-wide programs, aimed at preventing and eliminating drug abuse, in cooperation with local education agencies or other agencies or organizations, if appropriate;

(9) for strengthening State library administrative agencies; and

(10) for strengthening major urban resource libraries; and

(11) for assisting public libraries in making effective use of technology to improve library and information services.

(20 U.S.C. 352) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1666; amended Oct. 7, 1977, P.L. 95–123, sec. 4(c), 91 Stat. 1096; amended Oct. 17, 1984, P.L. 98–480, sec. 109, 98 Stat. 2240; amended Mar. 15, 1990, P.L. 101–254, secs. 9–12, 16(b), and 24(2), 104 Stat 104, 105 and 113.

USES OF FEDERAL FUNDS

SEC. 102. (a) Funds appropriated pursuant to paragraph (1) of section 4(a) shall be available for grants to States from allotments under section 5(a) for the purpose of paying the Federal share of the cost of carrying out State plans submitted and approved under section 6 and section 103. Except as is provided in subsection (b), grants to States under this title may be used solely—

(1) for planning for, and taking other steps leading to the development of, programs and projects designed to assist libraries to serve as community centers for information and referral and to extend and improve library services, as provided in clause (2);

(2) for (A) extending public library services to geographical areas and groups of persons without such services and improv-

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[1] So in original. Probably should be "afterschool".

ing such services in such areas and for such groups as may have inadequate public library services; and (B) establishing, expanding, and operating programs and projects to provide (i) State institutional library services, (ii) library services to the physically handicapped, and (iii) library services for the disadvantaged in urban and rural areas; and (C) strengthening metropolitan public libraries which serve as national or regional resource centers; and

(3) for supporting and expanding library services of major urban resource libraries which, because of the value of the collections of such libraries to individual users and to other libraries, need special assistance to furnish services at a level required to meet the demands made for such services.

No grant may be made under clause (3) of this subsection unless the major urban resource library provides services to users throughout the regional area in which such library is located. In carrying out its program to accomplish the purposes of this title, a State may make subgrants to library systems or networks which include libraries other than public libraries, if the purpose of the subgrant is to improve services for public library patrons.

(b) Subject to the provisions of section 8 and such limitations and criteria as the Secretary shall establish by regulation, grants to States under this Act may be used (1) to pay the cost of administering the State plans submitted and approved under this Act (including obtaining the services of consultants), statewide planning for and evaluation of library services, dissemination of information concerning library services, and the activities of such advisory groups and panels as may be necessary to assist the State library administrative agency in carrying out its functions under this title, and (2) for strengthening the capacity of State library administrative agencies for meeting the needs of the people of the States.

(c)(1) Subject to such criteria as the Secretary shall establish by regulation, in any fiscal year in which sums appropriated pursuant to paragraph (1) of section 4(a) (excluding the amount made available for Indian tribes and Hawaiian natives) exceed $60,000,000, each State which is subject to the provisions of this subsection shall reserve that portion of the allotment of each State attributable to the amount in excess of $60,000,000 in that fiscal year in the manner required in paragraph (2).

(2)(A) In each State having one or more cities with a population of 100,000 or more individuals, as determined by the Secretary, and in which the aggregate population of such cities does not exceed 50 percent of the total population of the State, the portion of the excess amount specified in paragraph (1) shall be reserved for the purposes described in subsection (a)(3) of this section in accordance with clause (2) of section 103 in an amount which bears the same ratio to the total of such excess amount as the aggregate population of such cities bears to the total population of such State.

(B) In each State having one or more cities with a population of 100,000 or more individuals, as determined by the Secretary, and in which the aggregate population of such cities exceeds 50 percent of the total population of the State, 50 percent of the excess amount specified in paragraph (1) shall be reserved for the purposes described in subsection (a)(3) in accordance with clause (2) of section 103.

(C) Any State which does not include any city with a population of 100,000 or more individuals, as determined by the Secretary, shall not be subject to the provisions of this subsection.

(3) No State shall, in carrying out the provisions of paragraph (2) of this subsection, reduce the amount paid to any major urban resource library below the amount that such library received in the fiscal year preceding the fiscal year for which the determination is made under such paragraph (2), except that such amount may be ratably reduced to the extent that (A) the total Federal allocations to the State under section 5 for purposes of this title for the applicable fiscal year are reduced, or (B) the 1990 Census shows the population of the city served by such library has decreased.

(20 U.S.C. 353) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1667; amended Oct. 7, 1977, P.L. 95–123, sec. 3 and 4, 91 Stat. 1095, 1096; amended Oct. 17, 1984, P.L. 98–480, secs. 103(b) and 110, 98 Stat. 2237, 2240; amended Nov. 22, 1985, P.L. 99–159, 99 Stat. 903; amended Mar. 15, 1990, P.L. 101–254, secs. 13 and 14, 104 Stat. 105.

STATE ANNUAL PROGRAM FOR LIBRARY SERVICES

SEC. 103. Any State desiring to receive a grant from its allotment for the purposes of this title for any fiscal year shall, in addition to having submitted, and having had approved, a basic State plan under section 6, submit for that fiscal year an annual program for library services. Such program shall be submitted at such time, in such form, and contain such information as the Secretary may require by regulation, and shall—

(1) set forth a program, subject to clause (2) of this section, for the year submitted under which funds paid to the State from appropriations pursuant to paragraph (1) of section 4(a) for that year will be used, consistent with its long-range program, solely for the purposes set forth in section 102;

(2) set forth a program for the year submitted under which the amount reserved by the State under section 102(c), if applicable, will be used for the purposes set forth in clause (3) of section 102(a);

(3) set forth the criteria used in allocating such funds among such purposes, which criteria shall insure that the State will expend from Federal, State, and local sources an amount not less than the amount expended by the State from such sources for State institutional library services, and library services to the physically handicapped and institutionalized individuals during the second fiscal year preceding the fiscal year for which the determination is made;

(4) describe the uses of funds for programs for the elderly;

(5) describe the uses of funds to make library services and programs more accessible to handicapped individuals. [1]

(6) include such information, policies, and procedures as will assure that the activities to be carried out during that year are consistent with the long-range program; and

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[1] So in original. The period probably should be a semicolon.

(7) include an extension of the long-range program, taking into consideration the results of evaluations.

No State shall, in carrying out the provisions of clause (2) of this section, reduce the amount paid to an urban resource library below the amount that such library received in the year preceding the year for which the determination is made under such clause (2). The amount which a State is required to expend pursuant to clause (3) of this section shall be ratably reduced to the extent that Federal allocations to the State are reduced and to the extent that the Secretary determines that the populations served by such expenditures has declined.

(20 U.S.C. 354) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1667; amended Oct. 7, 1977, P.L. 95–123, sec. 4(f) and (5), 91 Stat. 1096, 1097; amended Oct. 17, 1984, P.L. 98–480, secs. 103(b) and 111, 98 Stat. 2237, 2241; amended Mar. 15, 1990, P.L. 101–254, secs. 7(b), and 15, 104 Stat. 103 and 105.

TITLE II—PUBLIC LIBRARY CONSTRUCTION AND TECHNOLOGY ENHANCEMENT

GRANTS TO STATES FOR PUBLIC LIBRARY CONSTRUCTION AND LIBRARY AND INFORMATION TECHNOLOGY ENHANCEMENT

SEC. 201. The Secretary shall carry out a program of making grants to States which have had approved a basic State plan under section 6 and have submitted a long-range program and submit annually appropriately updated programs under section 203 for the construction and technology enhancement of public libraries.

(20 U.S.C. 355a) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1668; amended Oct. 17, 1984, P.L. 98–480, sec. 103(b), 98 Stat. 2237; amended Mar. 15, 1990, P.L. 101–254, sec. 16(c)(2), (3), 104 Stat. 106.

USES OF FEDERAL FUNDS

SEC. 202. (a) Funds appropriated pursuant to paragraph (2) of section 4(a) shall be available for grants to States from allotments under section 5(a) for the purpose of paying the Federal share of the cost of construction and technology enhancement projects carried[1] under State plans. Such grants shall be used for the construction and technology enhancement (as defined in sections 3(2) and 3(19), respectively of public libraries.

(b) For the purposes of subsection (a), the Federal share of the cost of construction and technology enhancement of any project assisted under this title shall not exceed one-half of the total cost of such project.

(c)[2] If, within 20 years after completion of construction of any library facility which has been constructed in part with funds made available under this title—

(1) the recipient (or its successor in title or possession) ceases or fails to be a public or nonprofit institution, or

(2) the facility ceases to be used as a library facility, unless the Secretary determines that there is good cause for releasing the institution from its obligation,

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[1] So in original. Probably should be followed by "out".

[2] Section 112(b)(2) of P.L. 98–480 provided that subsection (c) of section 202 of the Library Services and Construction Act applies to facilities constructed prior to and after the date of enactment of P.L. 98–480 with funds provided under title II of such Act.

the United States shall be entitled to recover from such recipient (or successor) an amount which bears the same ratio to the value of the facility at that time (or part thereof constituting an approved project or projects) as the amount of the Federal grant bore to the cost of such facility (or part thereof). The value shall be determined by the parties or by action brought in the United States district court for the district in which the facility is located.

(20 U.S.C. 355b) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1668; amended Oct. 7, 1977, P.L. 95–123, sec. 6, 91 Stat. 1097; amended Oct. 17, 1984, P.L. 98–480, secs. 112(a) and (b), 98 Stat. 2241; amended Mar. 15, 1990, P.L. 101–254, sec. 16(c)(3), and (4), 104 Stat. 106.

STATE ANNUAL PROGRAM FOR THE CONSTRUCTION AND TECHNOLOGY ENHANCEMENT OF PUBLIC LIBRARIES

SEC. 203. Any State desiring to receive a grant from its allotment for the purpose of this title for any fiscal year shall, in addition to having submitted, and having had approved, a basic State plan under section 6, submit such projects as the State may approve and are consistent with its long-range program.

Such projects shall be submitted at such time and contain such information as the Secretary may require by regulation and shall—

(1) for the year submitted under which funds are paid to the State from appropriations pursuant to paragraph (2) of section 4(a) for that year, be used, consistent with the State's long-range program, for the construction and technology enhancement of public libraries in areas of the State which are without the library facilities necessary to provide adequate library services;

(2) follow the criteria, policies, and procedures for the approval of applications for the construction and technology enhancement of public library facilities under the long-range program;

(3) follow policies and procedures which will insure that every local or other public agency whose application for funds under the plan with respect to a project for construction and technology enhancement of public library facilities is denied will be given an opportunity for a hearing before the State library administrative agency;

(4) include an extension of the long-range program taking into consideration the results of evaluations; and

(5) follow policies and procedures in the construction of public libraries that will promote the preservation of library and information resources to be utilized in the facilities.

(20 U.S.C. 355c) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1668; amended Oct. 17, 1984, P.L. 98–480, sec. 103(b), 98 Stat. 2237; amended Mar. 15, 1990, P.L. 101–254, secs. 16(c)(3), and 17, 104 Stat. 106.

TITLE III—INTERLIBRARY COOPERATION AND RESOURCE SHARING

GRANTS TO STATES FOR INTERLIBRARY COOPERATION PROGRAMS

SEC. 301. The Secretary shall carry out a program of making grants to States which have an approved basic State plan under section 6, have submitted a long-range program and an annual program under section 303 for interlibrary cooperation programs, and have submitted long-range and annual programs which are directed toward attaining compliance with the requirements of section 304.

(20 U.S.C. 355e) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1668; amended Oct. 17, 1984, P.L. 98–480, secs. 103(b) and 113(a) and (b), 98 Stat. 2237, 2242; amended Mar. 15, 1990, P.L. 101–254, sec. 18(a), 104 Stat. 106.

USES OF FEDERAL FUNDS

SEC. 302. (a) Funds appropriated pursuant to paragraph (3) of section 4(a) shall be available for grants to States from allotments under paragraphs (1) and (3) of section 5(a) for the purpose of carrying out the Federal share of the cost of carrying out State plans submitted and approved under section 303. Such grants shall be used (1) for planning for, and taking other steps leading to the development of, cooperative library networks; (2) establishing, expanding, and operating local, regional, and interstate cooperative networks of libraries, which provide for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers for improved supplementary services for the special clientele served by each type of library or center; and (3) developing the technological capacity of libraries for interlibrary cooperation and resource sharing.

(b) For the purposes of this title, the Federal share shall be 100 per centum of the cost of carrying out the State plan.

(20 U.S.C. 355e–1) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1669; amended Mar. 15, 1990, P.L. 101–254, sec. 16(d), 104 Stat. 106.

STATE ANNUAL PROGRAM FOR INTERLIBRARY COOPERATION

SEC. 303. Any State desiring to receive a grant from its allotment for the purposes of this title for any fiscal year shall, in addition to having submitted, and having had approved, a basic State plan under section 6, submit for that fiscal year an annual program for interlibrary cooperation. Such program shall be submitted at such time, in such form, and contain such information as the Secretary may require by regulation and shall comply with the requirements of section 304, shall—

(1) set forth a program for the year submitted under which funds paid to the State from appropriations pursuant to paragraph (3) of section 4(a) will be used, consistent with its long-range program for the purposes set forth in section 302,

(2) include an extension of the long-range program taking into consideration the results of evaluations.

(20 U.S.C. 355e–2) Enacted Dec. 30, 1970, P.L. 91–600, sec. 2(b), 84 Stat. 1669; amended Oct. 17, 1984, P.L. 98–480, secs. 103(b) and 113(c), 98 Stat. 2237, 2242.

RESOURCE SHARING

SEC. 304. (a) The long-range program and annual program of each State shall include a statewide resource sharing plan which is directed toward attaining compliance with the provisions of this section.

(b) In developing the State basic and long-range programs, the State library agency with the assistance of the State advisory council on libraries shall consider recommendations from current and potential participating institutions in the interlibrary and resource sharing programs authorized by this title.

(c) The State's long-range program shall identify interlibrary and resource sharing objectives to be achieved during the period covered by the basic and long-range plans required by section 6. The long-range program may include—

(1) criteria for participation in statewide resource sharing to ensure equitable participation by libraries of all types that agree to meet requirements for resource sharing;

(2) an analysis of the needs for development and maintenance of bibliographic access, including data bases for monographs, serials, and audiovisual materials;

(3) an analysis of the needs for development and maintenance of communications systems for information exchange among participating libraries;

(4) an analysis of the needs for development and maintenance of delivery systems for exchanging library materials among participating libraries;

(5) a projection of the computer and other technological needs for resource sharing;

(6) an identification of means which will be required to provide users access to library resources, including collection development and maintenance in major public, academic, school, and private libraries serving as resource centers;

(7) a proposal, where appropriate, for the development, establishment, demonstration, and maintenance of intrastate multitype library systems;

(8) an analysis of the State's needs for development and maintenance of links with State and national resource sharing systems; and

(9) a description of how the evaluations required by section 6(d) will be conducted.

(d) Libraries participating in resource sharing activities under this section may be reimbursed for their expenses in loaning materials to public libraries.

(e) Public and school libraries which cooperate to make school library resources available to the public during periods when school is not in session may be reimbursed for such expenses.

(20 U.S.C. 355e–3) Enacted Oct. 17, 1984, P.L. 98–480, sec. 113(d), 98 Stat. 2242; amended Mar. 15, 1990, P.L. 101–254, sec. 18, 104 Stat. 106.

PRESERVATION PROGRAMS

SEC. 305. (a) The long-range program and annual program of each State under this title may—

(1) include a statewide preservation cooperation plan that complies with this section; and

(2) identify the preservation objectives to be achieved during the period covered by the long-range plans required by section 6.

(b) A statewide preservation cooperation plan complies with this section if—

(1) such plan specifies the methods by which the State library administrative agency will work with libraries, archives,

historical societies, scholarly organizations, and other agencies, within or outside the State, in planning, education and training, coordinating, outreach and public information, and service programs to ensure that endangered library and information resources are preserved systematically; and

(2) such preservation plan is developed in consultation with such parties and agencies as the State archives, historical societies, libraries, scholarly organizations, and other interested parties.

(c) A State which has a statewide preservation cooperation plan that complies with this section may use funds under this title to carry out such plan.

(d) The State library administrative agency may contract part or all of the preservation program under this section to other agencies or institutions.

(20 U.S.C. 335e-4) Enacted Mar. 15, 1990, P.L. 101–254, sec. 19, 104 Stat. 106.

TITLE IV—LIBRARY SERVICES FOR INDIAN TRIBES

FINDINGS AND PURPOSE; AUTHORIZATION OF GRANTS

SEC. 401. (a) The Congress finds that—

(1) most Indian tribes receive little or no funds under titles I, II, and III of this Act;

(2) Indian tribes and reservations are generally considered to be separate nations and seldom are eligible for direct library allocations from States;

(3) the vast majority of Indians living on or near reservations do not have access to adequate libraries or have access to no libraries at all; and

(4) this title is therefor required specifically to promote special efforts to provide Indian tribes with library services.

(b) It is therefor the purpose of this title (1) to promote the extension of public library services to Indian people living on or near reservations; (2) to provide incentives for the establishment and expansion of tribal library programs; and (3) to improve the administration and implementation of library services for Indians by providing funds to establish and support ongoing library programs.

(c) The Secretary shall carry out a program of making grants from allotments under section 5(c)(1) to Indian tribes that have submitted an approved application under section 403 for library services to Indians living on or near reservations.

(d) The Secretary shall carry out a program of making special project grants from funds available under section 5(c)(2) to Indian tribes that have submitted approved plans for the provision of library services as described in section 404.

(20 U.S.C. 361) Enacted May 3, 1973, P.L. 93–29, sec. 801(a), 87 Stat; amended Oct. 17, 1984, P.L. 98–480, sec. 114, 98 Stat. 2243.

USE OF FUNDS

SEC. 402. (a) Funds made available by grant under subsection (c) or (d) of section 401 may be used for—

(1) inservice or preservice training of Indians as library personnel;

(2) purchase of library materials;

(3) conduct of special library programs for Indians;

(4) salaries of library personnel;

(5) construction, purchase, renovation, or remodeling of library buildings and facilities;

(6) transportation to enable Indians to have access to library services;

(7) dissemination of information about library services;

(8) assessment of tribal library needs; and

(9) contracts to provide public library services to Indians living on or near reservations or to accomplish any of the activities described in clauses (1) through (8).

(b) Any tribe that supports a public library system shall continue to expend from Federal, State, and local sources an amount not less than the amount expended by the tribe from such sources for public library services during the second fiscal year preceding the fiscal year for which the determination is made.

(c) Nothing in this Act shall be construed to prohibit restricted collections of tribal cultural materials with funds made available under this Act.

(20 U.S.C. 362) Enacted May 3, 1973, P.L. 93–29, sec. 801(a), 87 Stat. 57; amended Oct. 17, 1984, P.L. 98–480, sec. 114, 98 Stat. 2243.

APPLICATIONS FOR LIBRARY SERVICES TO INDIANS

SEC. 403. Any Indian tribe which desires to receive its allotment under section 5(c)(1) shall submit an application which contains such information as the Secretary may require by regulation.

(20 U.S.C. 363) Enacted May 3, 1973, P.L. 93–29, sec. 801(a), 87 Stat. 58; amended Oct. 17, 1984, P.L. 98–480, sec. 114, 98 Stat. 2244.

PLANS FOR LIBRARY SERVICES TO INDIANS

SEC. 404. Any Indian tribe which desires to receive a special project grant from funds available under section 5(c)(2) shall submit a plan for library services on or near an Indian reservation. Such plans shall be submitted at such time, in such form, and contain such information as the Secretary may require by regulation and shall set forth a program for the year under which funds paid to the Indian tribe will be used, consistent with—

(1) a long-range program, and

(2) the purposes set forth in section 402(a).

(20 U.S.C. 364) Enacted May 3, 1973, P.L. 93–29, sec. 801(a), 87 Stat. 58; amended Oct. 17, 1984, P.L. 98–480, sec. 114, 98 Stat. 2244.

COORDINATION WITH PROGRAMS FOR INDIANS

SEC. 405. The Secretary, with the Secretary of the Interior, shall coordinate programs under this title with the programs assisted under the various Acts and programs administered by the Department of the Interior that pertain to Indians.

(20 U.S.C. 365) Enacted Oct. 17, 1984, P.L. 98–480, sec. 114, 98 Stat. 2244.

SERVICES IN STATES WITH INDIAN TRIBES NOT RESIDING ON OR NEAR RESERVATIONS

SEC. 406. The provisions of this title requiring that services be provided on or near Indian reservations, or to only those Indians who live on or near Indian reservations, shall not apply in the case of Indian tribes and Indians in California, Oklahoma, and Alaska.

(20 U.S.C. 366) Enacted Nov. 22, 1985, P.L. 99–159, 99 Stat. 903.

TITLE V—FOREIGN LANGUAGE MATERIALS ACQUISITION

GRANTS FOR FOREIGN LANGUAGE MATERIAL ACQUISITION

SEC. 501. (a) The Secretary shall carry out a program of making grants from sums appropriated pursuant to section 4(a)(4) to State and local public libraries for the acquisition of foreign language materials.

(b) Recipients of grants under this title shall be selected on a competitive basis.

(c) No grant under this title for any fiscal year shall exceed $35,000, except that—

(1) not more than 30 percent of the funds available for grants under this title in any fiscal year may be used to make grants in amounts between $35,000 and $125,000; and

(2) no recipient may receive more than one grant under this title for any fiscal year.

(20 U.S.C. 371) Enacted Oct. 17, 1984, P.L. 98–480, sec. 115, 98 Stat. 2244; amended Mar. 15, 1990, P.L. 101–254, sec. 20, 104 Stat. 107.

TITLE VI—LIBRARY LITERACY PROGRAMS

STATE AND LOCAL LIBRARY GRANTS

SEC. 601. (a) The Secretary shall carry out a program of making grants from sums appropriated pursuant to section 4(a)(5) to State and local public libraries for the purposes of supporting literacy programs.

(b) Grants to State public libraries under this title shall be for the purposes of—

(1) coordinating and planning library literacy programs; and

(2) making arrangements for training librarians and volunteers to carry out such programs.

(c) Grants to local public libraries shall be for the purposes of—

(1) promoting the use of the voluntary services of individuals, agencies, and organizations in providing literacy programs;

(2) acquisition of materials for literacy programs; and

(3) using library facilities for such programs.

(d) Recipients of grants under this title shall be selected on a competitive basis.

(e) No grant under this title for any fiscal year shall exceed $35,000.

(f) In awarding grants under this section the Secretary shall give priority to programs and services which—

(1) will be delivered in areas of greatest need which have highest concentrations of adults who do not have a secondary education or its equivalent, and which—

(A) have few community or financial resources to establish the program described under this section without Federal assistance, or

(B) have low per capita income, unemployment or underemployment; and

(2) coordinate with literacy organizations and community based organizations providing literacy services.

(20 U.S.C. 375) Enacted Oct. 17, 1984, P.L. 98–480, sec. 115, 98 Stat. 2245; amended Mar. 15, 1990, P.L. 101–254, sec. 21, 1990, 104 Stat. 107; amended July 25, 1991, P.L. 102–73, sec. 502, 105 Stat. 356.

TITLE VII—EVALUATION AND ASSESSMENT

PROGRAM AUTHORITY

SEC. 701. The Secretary is authorized to carry out a program for the purpose of evaluation and assessment (directly or by grants or contracts) of programs authorized under this Act.

(20 U.S.C. 381) Enacted Mar. 15, 1990, P.L. 101–254, sec. 22(a), 104 Stat. 107.

TITLE VIII—LIBRARY LEARNING CENTER PROGRAMS

PART A—FAMILY LEARNING CENTERS

STATEMENT OF PURPOSE

SEC. 801. It is the purpose of this part to expand and improve opportunities for lifetime learning and the involvement of the Nation's families as partners in their children's education by providing comprehensive, family-oriented library services through Family Learning Centers.

(20 U.S.C. 385) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 107.

GRANTS FOR FAMILY LEARNING CENTERS

SEC. 802. The Secretary shall carry out a program of making grants from sums appropriated pursuant to paragraph (7) of section 4(a) to local public libraries for the purposes of supporting family learning centers.

(20 U.S.C. 385a) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 108.

USE OF FUNDS

SEC. 803. (a) Funds made available to a grantee under this part shall be used to initiate, expand, or improve public library services to families.

(b) Not less than 25 percent of the funds made available under this part shall be used for the acquisition of resources and materials in print and electronic formats—

(1) which are intended for use by and with adults, including materials in such areas as child care, child development, nutrition, parenting skills, and job and career information; and

(2) which are intended for use by and with children and adolescents.

(c) Not less than 10 percent of the funds made available to a grantee under this part shall be used for—

(1) the acquisition or leasing of computer hardware for use by library patrons, including services necessary for the operation, installation, and maintenance of such equipment; and

(2) the acquisition of computer software and complementary explanatory material for use by library patrons.

(20 U.S.C. 385b) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 108.

APPLICATION

SEC. 804. (a) Any local public library which wishes to receive a grant under this part shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary determines is necessary to evaluate the quality of the applicant's proposal and the applicant's ability to carry it out.

(b) Each such application shall—

(1) describe the manner in which the funds will be used to initiate, expand, or improve library services to families;

(2) provide assurances that the library will be open on weekday evenings, Saturdays, and some Sundays and legal public holidays to enable families in which both parents work outside the home to utilize the library's services;

(3) demonstrate that the library has or will have sufficient qualified staff with specialized training in providing library services to children, adolescents, and adults;

(4) provide for the establishment of an advisory committee consisting of parents, teachers, local school administrators, librarians, library administrators, library trustees, local elected officials, and business leaders, at least one-third of whom are parents who regularly use the services of the library;

(5) provide for the establishment of a family library loan program through which families may borrow sets of books for extended periods, and other innovative programs and policies designed to encourage greater use of the library by families;

(6) provide for a job and career information program to provide information and assistance to parents and others who are unemployed or seeking a new job;

(7) describe, if appropriate, any special services and outreach activities which will be offered to meet the needs of—

(A) adolescent parents;

(B) single-parent families;

(C) families in which both parents are employed outside the home;

(D) parents and children with limited English language proficiency; and

(E) educationally disadvantaged adults and their children;

(8) describe the methods by which the library will publicize and promote the services of the Center in cooperation with the local media, schools, businesses, social service agencies, and other appropriate entities; and

(9) provide assurances that the funds provided will be used to supplement and not supplant funds otherwise available for the purposes of this part.

(20 U.S.C. 385c) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 108.

SELECTION OF FAMILY LEARNING CENTERS

SEC. 805. (a) The Secretary shall select family learning centers on a competitive basis from among the local public libraries submitting applications under section 804. In making such selection, the Secretary shall give priority to applications which—

(1) promise to serve a significant number of families on a regular basis; and

(2) offer innovative approaches to improving library services for families and approaches which show promise for replication and dissemination.

(b) In making grants under this title, the Secretary shall assure that there is an equitable distribution of grants among the States and between urban and rural communities.

(c) No grant made under this title for any fiscal year shall exceed $200,000.

(20 U.S.C. 385d) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 109.

AUTHORIZATION OF APPROPRIATIONS

SEC. 806. There are authorized to be appropriated $3,000,000 for fiscal year 1990 and such sums as may be necessary for each succeeding fiscal year to carry out the provisions of this part.

(20 U.S.C. 385e) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 109.

PART B—LIBRARY LITERACY CENTERS

STATEMENT OF PURPOSE

SEC. 811. The purposes of this part are to—

(1) establish model library literacy centers throughout the country to serve as resource centers for the dissemination of literacy materials and equipment to local public libraries in order to help overcome the high incidence of adults with limited literacy skills in the United States;

(2) help adults with limited literacy skills reach full employment through nonthreatening learning experiences in their local public library or in their own home; and

(3) offer innovative approaches to improving library literacy services to adults and approaches which show promise for replication and dissemination.

(20 U.S.C. 386) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 109.

GRANTS TO STATES FOR LIBRARY LITERACY CENTERS

SEC. 812. (a) The Secretary shall carry out a program of making grants on a competitive basis to States which have an approved basic State plan under section 6 of this Act and an approved application under section 813 of this Act.

(b)(1) The total grant amount awarded to each State shall not exceed—

(A) $350,000 in the first fiscal year in which a State receives a grant under this part; and

(B) $100,000 in the second and third fiscal years in which a State receives a grant under this part.

(2) Funds received in the first fiscal year in which a State receives a grant under this part shall remain available until expended. Funds received in the second and third fiscal year in which a State receives a grant under this part shall be available only for the fiscal year for which funds are received.

(3) Funds received in the second and third fiscal years in which a State receives a grant under this part shall be matched, on a dollar for dollar basis, from non-Federal sources.

(20 U.S.C. 386a) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 110.

STATE APPLICATION

SEC. 813. (a) Funds appropriated pursuant to section 818 shall be available for grants to States for the purpose of supporting not more than 1 library literacy center in each State to coordinate the state-wide distribution of library literacy materials and equipment on a loan basis to local public libraries within the State.

(b) Any State wishing to receive a grant shall, through its State library administrative agency, in conjunction with the advisory committee established under section 816, submit an application to the Secretary at such time, in such form, and containing such information and assurances as the Secretary may reasonably require. No application may be approved by the Secretary unless it contains assurances that the State will—

(1) designate the State library administrative agency, or select a local public library through a competitive process, to serve as a library literacy center in accordance with the provisions of this part;

(2) provide assurances that the library literacy center will—

(A) select local public libraries to participate in a literacy materials and equipment loan program;

(B) select at least 25 percent of the local libraries that participate in the literacy materials and equipment loan program from rural areas;

(C) give priority in the selection of local public libraries to participate in the literacy materials and equipment loan program to public libraries within the State which serve those in greatest need;

(D) coordinate the distribution of equipment and materials;[1]

(E) provide training to local public library personnel;

(3) describe how the results of the grant program will be evaluated and disseminated;

(4) set forth the potential of the grant program for achieving replicability and for serving as a model program; and

(5) distribute 100 percent of the amounts received pursuant to this part to the library literacy center as designated or selected under section 817.

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[1] So in original. Probably should be "; and".

(c) The Secretary shall give priority to applicants whose applications comply with the provisions of this part and describe programs and services to be delivered in States which have—

(1) the highest concentrations of adults who do not have a secondary education or its equivalent,

(2)(A) few community or financial resources to establish the program described under this part without Federal assistance, or

(B) low per capita income, or high concentrations of unemployment or underemployment.

(20 U.S.C. 386b) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 110.

USE OF FUNDS

SEC. 814. (a) Funds made available under this part shall be used by the library literacy centers to establish coordination centers to make literacy materials and equipment available to local public libraries on a loan basis to initiate, expand, or improve public library literacy services and programs. Such services and programs may include—

(1) the acquisition of literacy education equipment including, but not limited to, video recorders and television monitors;

(2) the acquisition of print materials, audio tapes and video tapes designed to train adults with limited literacy skills, including materials and tapes prepared by public television;

(3) the acquisition of library resource materials for literacy instruction purposes;

(4) the acquisition of literacy training materials including but not limited to General Education Development (GED) print materials and video tapes; and

(5) staffing for coordination and training of local library personnel on literacy services.

(b) Each library literacy center receiving a grant under this part may use no more than 25 percent of such funds for the acquisition of literacy education computers and computer software.

(20 U.S.C. 386c) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 111.

LOCAL APPLICATION

SEC. 815. (a) Any local public library desiring to participate in programs and services conducted pursuant to this part shall submit an application to the State or the library literacy center as selected by the State under section 817 at such time, in such form, and containing such information as the State or the library literacy center determines is necessary to evaluate the quality of the local public library's proposal and the local public library's ability to carry out such proposal.

(b) Each such application shall—

(1) describe the manner in which the equipment and materials will be used to initiate, expand, or improve local library literacy services;

(2) demonstrate that the library has or will have sufficient qualified staff and volunteers with specialized training in providing library literacy services to adults;

(3) provide for the establishment of—

(A) a library literacy loan program through which adults with limited literacy skills or individuals helping illiterate adults to learn to read may borrow books, video tapes, and other learning materials;

(B) other innovative programs and policies designed to encourage greater use of the library by adults with limited literacy skills or individuals helping illiterate adults learn to read;

(4) provide assurances that coordination will take place with literacy organizations and community-based organizations providing literacy services;

(5) provide job and career information to adults with limited literacy skills who are unemployed or seeking a new job;

(6) provide information or referrals to other adult education opportunities in the community;

(7) describe, if appropriate, any special services and outreach activities which will be offered to meet the needs of adults with limited literacy skills;

(8) describe the methods by which the library will publicize and promote the services of the library in cooperation with the local media, schools, businesses, social service agencies, and other appropriate entities; and

(9) provide assurances that the materials, equipment and training provided will be used to supplement and not supplant materials, equipment and training otherwise available for the purposes of this part.

(20 U.S.C. 386d) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 111.

ADVISORY COMMITTEE

SEC. 816. Each State receiving a grant under this part shall establish an advisory committee to assist in coordinating the services and programs assisted under this part. Such committee shall consist of, but not be limited to, representatives of—

(1) the Governor's office;
(2) the State library administrative agency;
(3) the State Advisory Council on Libraries;
(4) the State department of education;
(5) the State employment office;
(6) public television; and
(7) adult literacy community organizations.

(20 U.S.C. 386e) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 112.

SELECTION OF LITERACY LEARNING CENTERS

SEC. 817. Each State receiving a grant under this part shall designate the State library administrative agency as the library literacy center or shall select a library literacy center on a competitive basis from among the local public libraries submitting applications under section 815. In making such selection, the State shall give priority to applications which—

(1) demonstrate the greatest ability to carry out the requirements of section 813 and to serve other local libraries; and

(2) offer innovative approaches to improving library literacy services to adults and approaches which show promise for replication and dissemination.

(20 U.S.C. 386f) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 112.

AUTHORIZATION OF APPROPRIATIONS

SEC. 818. There are authorized to be appropriated $3,000,000 for fiscal year 1991 and such sums as may be necessary for each fiscal year thereafter to carry out the provisions of this part.

(20 U.S.C. 386g) Enacted Mar. 15, 1990, P.L. 101–254, sec. 23(a), 104 Stat. 113.

National Commission on Libraries and Information Science Act

(Public Law 91–345)

AN ACT To establish a National Commission on Libraries and Information Science, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Commission on Libraries and Information Science Act".

(20 U.S.C. 1501, note) Enacted July 20, 1970, P.L. 91–345, sec. 1, 84 Stat. 440.

STATEMENT OF POLICY

SEC. 2. The Congress hereby affirms that library and information services adequate to meet the needs of the people of the United States are essential to achieve national goals and to utilize most effectively the Nation's educational resources and that the Federal Government will cooperate with State and local governments and public and private agencies in assuring optimum provision of such services.

(20 U.S.C. 1501) Enacted July 20, 1970, P.L. 91–345, sec. 2, 84 Stat. 440.

COMMISSION ESTABLISHED

SEC. 3. (a)[1] There is hereby established as an independent agency within the executive branch, a National Commission on Libraries and Information Science (hereinafter referred to as the "Commission").

(20 U.S.C. 1502) Enacted July 20, 1970, P.L. 91–345, sec. 3, 84 Stat. 440; amended August 14, 1991, P.L. 102–95, sec. 2, 105 Stat. 479.

SEC. 4. CONTRIBUTIONS.

The Commission is authorized to accept, hold, administer, and utilize gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon the order of the Commission.

(20 U.S.C. 1503) Enacted July 20, 1970, P.L. 91–345, sec. 4, 84 Stat. 441; amended August 14, 1991, P.L. 102–95, sec. 3, 105 Stat. 479.

FUNCTIONS

SEC. 5. (a) The Commission shall have the primary responsibility for developing or recommending overall plans for, and advising the appropriate governments and agencies on, the policy set forth in section 2. In carrying out that responsibility, the Commission shall—

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[1] So in law. Subsection (b) was repealed by section 2 of P.L. 102–95 (105 Stat. 479).

(1) advise the President and the Congress on the implementation of national policy by such statements, presentations, and reports as it deems appropriate;

(2) conduct studies, surveys, and analyses of the library and informational needs of the Nation, including the special library and informational needs of rural areas, of economically, socially, or culturally deprived persons and of elderly persons, and the means by which these needs may be met through information centers, through the libraries of elementary and secondary schools and institutions of higher education, and through public, research, special, and other types of libraries;

(3) appraise the adequacies and deficiencies of current library and information resources and services and evaluate the effectiveness of current library and information science programs;

(4) develop overall plans for meeting national library and informational needs and for the coordination of activities at the Federal, State, and local levels, taking into consideration all of the library and informational resources of the Nation to meet those needs;

(5) be authorized to advise Federal, State, local, and private agencies regarding library and information sciences;

(6) promote research and development activities which will extend and improve the Nation's library and information handling capability as essential links in national and international communications and cooperative networks;

(7) submit to the President and the Congress (not later than January 31 of each year) a report on its activities during the preceding fiscal year; and

(8) make and publish such additional reports as it deems to be necessary, including, but not limited to, reports of consultants, transcripts of testimony, summary reports, and reports of other Commission findings, studies, and recommendations.

(b) The Commission is authorized to contract with Federal agencies and other public and private agencies to carry out any of its functions under subsection (a) and to publish and disseminate such reports, findings, studies, and records as it deems appropriate.

(c) The Commission is further authorized to conduct such hearings at such times and places as it deems appropriate for carrying out the purposes of this Act.

(d) The heads of all Federal agencies are, to the extent not prohibited by law, directed to cooperate with the Commission in carrying out the purposes of this Act.

(20 U.S.C. 1504) Enacted July 20, 1970, P.L. 91–345, sec. 5, 84 Stat. 441; amended May 3, 1973, sec. 802(a), P.L. 93–29, 87 Stat. 59; amended August 14, 1991, P.L. 102–95, sec. 4, 105 Stat. 479.

MEMBERSHIP

SEC. 6. (a) The Commission shall be composed of the Librarian of Congress and fourteen members appointed by the President, by and with the advice and consent of the Senate. Five members of the Commission shall be professional librarians or information specialists, and the remainder shall be persons having special competence or interest in the needs of our society for library and information services, at least one of whom shall be knowledgeable with respect to the technological aspects of library and information services and sciences. One of the members of the Commission shall be designated by the President as Chairman of the Commission. A majority of members of the Commission shall constitute a quorum for conduct of business at official meetings of the Commission. The terms of office of the appointive members of the Commission shall be five years, except that (1) the term of office of any member of the Commission shall continue until the earlier of (A) the date on which the member's successor has been appointed by the President; or (B) July 19 of the year succeeding the year in which the member's appointed term of office shall expire, and (2) a member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term and at least one other of whom shall be knowledgeable with respect to the library and information service and science needs of the elderly.

(b) Members of the Commission who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Commission or otherwise engaged in the business of the Commission, be entitled to receive compensation at a rate fixed by the Chairman, but not exceeding the rate specified at the time of such service for grade GS–18 in section 5332 of title 5, United States Code, including traveltime, and while so serving on the business of the Commission away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(c)(1) The Commission is authorized to appoint, without regard to the provisions of title 5, United States Code, covering appointments in the competitive service, such professional and technical personnel as may be necessary to enable it to carry out its function under this Act.

(2) The Commission may procure, without regard to the civil service or classification laws, temporary and intermittent services of such personnel as is necessary to the extent authorized by section 3109 of titie 5, United States Code, but at rates not to exceed the rate specified at the time of such service for grade GS–18 in section 5332 of title 5, United States Code, including traveltime, and while so serving on the business of the Commission away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(20 U.S.C. 1505) Enacted July 20, 1970, P.L. 91–345, sec. 6, 84 Stat. 442; amended May 3, 1973, P.L. 93–29, sec. 802(b), 87 Stat. 59; amended August 14, 1991, P.L. 102–95, sec. 5, 105 Stat. 479.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $911,000 for fiscal year 1992 and such sums as may be necessary for each succeeding fiscal year thereafter to carry out the provisions of this Act.

(20 U.S.C. 1506) Enacted July 20, 1970, sec. 7, 84 Stat. 442; amended August 14, 1991, P.L. 102–95, sec. 6, 105 Stat. 479.

Federal Property and Administrative Services Act of 1949[1]

(Ch. 288, Title II)

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PROPERTY UTILIZATION

SEC. 202. (a) * * *

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(d) Notwithstanding any other provisions of law, Federal agencies are prohibited from obtaining excess personal property for purposes of furnishing such property to grantees of such agencies, except as follows:

(1) Under such regulations as the Administrator may prescribe, any Federal agency may obtain excess personal property for purposes of furnishing it to any institution or organization which is a public agency or is nonprofit and exempt from taxation under section 501 of the Internal Revenue Code of 1954, and which is conducting a federally sponsored project pursuant to a grant made for specific purpose with a specific termination made: *Provided,* That—

(A) such property is to be furnished for use in connection with the grant; and

(B) the sponsoring Federal agency pays an amount equal to 25 per centum of the original acquisition cost (except for costs of care and handling) of the excess property furnished, such funds to be covered into the Treasury as miscellaneous receipts.

Title to excess property obtained under this paragraph shall vest in the grantees and shall be accounted for and disposed of in accordance with procedures governing the accountability of personal property acquired under grant agreements.

(2) Under such regulations and restrictions as the Administrator may prescribe, the provisions of this subsection shall not apply to the following:

(A) property furnished under section 608 of the Foreign Assistance Act of 1961, as amended, where and to the extent that the Administrator of General Services determines that the property to be furnished under such Act is not needed for donation pursuant to section 203(j) of this Act;

(B) scientific equipment furnished under section 11(e) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(e));

(C) property furnished under section 203 of the Department of Agriculture Organic Act of 1944 (16 U.S.C. 580a), in connection with the Cooperative Forest Fire Control Program, where title is retained in the United States;

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[1] Enacted June 30, 1949, 63 Stat. 385.

(D) property furnished in connection with grants to Indian tribes as defined in section 3(c) of the Indian Financing Act (25 U.S.C. 1452(c)); or

(E) property furnished by the Secretary of Agriculture to any State or county extension service engaged in cooperative agricultural extension work pursuant to the Act of May 8, 1914 (7 U.S.C. 341 et seq.); any State experiment station engaged in cooperative agricultural research work pursuant to the Act of March 2, 1887 (7 U.S.C. 361a et seq.); and any institution engaged in cooperative agricultural research or extension work pursuant to sections 1433, 1434, 1444, or 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3195, 3196, 3221, and 3222) or the Act of October 10, 1962 (16 U.S.C. 582a et seq.), where title is retained in the United States. For the purpose of this provision, the term "State" means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, and American Samoa, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, the Virgin Islands of the United States, and the District of Columbia.

This paragraph shall not preclude any Federal agency obtaining property and furnishing it to a grantee of that agency under paragraph (1) of this subsection.

(e) Each executive agency shall submit during the calendar quarter following the close of each fiscal year a report to the Administrator showing, with respect to personal property—

(1) obtained as excess property or as personal property determined to be no longer required for the purposes of the appropriation from which it was purchased, and

(2) furnished in any manner whatsoever within the United States to any recipient other than a Federal agency,

the acquisition cost, categories of equipment, recipient of all such property, and such other information as the Administrator may require. The Administrator shall submit a report to the Senate (or to the Secretary of the Senate if the Senate is not in session) and to the House of Representatives (or to the Clerk of the House if the House is not in session) summarizing and analyzing the reports of the executive agencies.

(40 U.S.C. 483)

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DISPOSAL OF SURPLUS PROPERTY

SEC. 203. (a) * * *

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(j)(1) Under such regulations as he may prescribe, the Administrator is authorized in his discretion to transfer, without cost (except for costs of care and handling), any personal property under the control of any executive agency which has been determined to be surplus property to the State agency in each State designated under State law as the agency responsible for the fair and equitable distribution, through donation, of all property transferred in accordance with the provisions of paragraphs (2) and (3) of this subsection. In determining whether the property is to be transferred for donation under this subsection, no distinction shall be made between property capitalized in a working-capital fund established under section 2208 of title 10, United States Code, or any similar fund, and any other property.

(2) In the case of surplus personal property under the control of the Department of Defense, the Secretary of Defense shall determine whether such property is usable and necessary for educational activities which are of special interest to the armed services, such as maritime academies, or military, naval, Air Force, or Coast Guard preparatory schools. If the Secretary determines that such property is usable and necessary for said purposes, the Secretary shall allocate it for transfer by the Administrator to the appropriate State agency for distribution, through donation, to such educational activities. If the Secretary determines that such property is not usable and necessary for such purposes, it may be disposed of in accordance with paragraph (3) of this subsection.

(3) Except for surplus personal property transferred pursuant to paragraph (2) of this subsection, the Administrator shall, pursuant to criteria which are based on need and utilization and established after such consultation with State agencies as is feasible, allocate such property among the States in a fair and equitable basis (taking into account the condition of the property as well as the original acquisition cost thereof), and transfer to the State agency property selected by it for distribution through donation within the State—

(A) to any public agency for use in carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; or

(B) to nonprofit educational or public health institutions or organizations, such as medical institutions, hospitals, clinics, health centers, providers of assistance to homeless individuals [1] schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, child care centers, radio and television stations licensed by the Federal Communications Commission a educational radio or educational television stations, museums attended by the public, and libraries serving free all residents of a community, district, State, or region, which are exempt from taxation under section 501 of the Internal Revenue Code of 1954, for purposes of education or public health (including research for any such purpose).

The Administrator, in allocating and transferring property under this paragraph, shall give fair consideration, consistently with the established criteria, to expressions of need and interest on the part of public agencies and other eligible institutions within that State, and shall give special consideration to requests by eligible recipients, transmitted through the State agency, for specific items of property.

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[1] So in law. Probably should add a comma.

(4)(A) before property may be transferred to any State agency, such State shall develop, according to State law, a detailed plan of operation, developed in conformity with the provisions of this subsection, which shall include adequate assurance that the State agency has the necessary organizational and operational authority and capability, including staff, facilities, means and methods of financing, and procedures with respect to: accountability, internal and external audits, cooperative agreements, compliance and utilization reviews, equitable distribution and property disposal, determination of eligibility, and assistance through consultation with advisory bodies and public and private groups. The chief executive officer shall certify and submit the plan to the Administrator. In the event that a State legislature has not developed, according to State law, a State plan within two hundred and seventy calendar days after the date of enactment of this Act, the chief executive officer of the State shall approve, and submit to the Administrator, a temporary State plan. No such plan, and no major amendment thereof, shall be filed with the Administrator until sixty days after general notice of the proposed plan or amendment has been published and interested persons have been given at least thirty days during which to submit comments. In developing and implementing the State plan, the relative needs and resources of all public agencies and other eligible institutions within the State shall be taken into consideration. The Administrator may consult with interested Federal agencies for purposes of obtaining their views concerning the administration and operation of this subsection.

(B) The State plan shall provide for the fair and equitable distribution of property within such State based on the relative needs and resources of interested public agencies and other eligible institutions within the State and their abilities to utilize the property.

(C)(i) The State plan of operation shall require the State agency to utilize a management control system and accounting system for donable property transferred under this section of the same types as are required by State law for State-owned property, except that the State agency, with the approval of the chief executive officer of the State, may elect, in lieu of such systems, to utilize such other management control and accounting systems as are effective to govern the utilization, inventory control, accountability, and disposal of property under this subsection.

(ii) The State plan of operation shall require the State agency to provide for the return of donable property for further distribution if such property, while still usable, has not been placed in use for the purpose for which it was donated within one year of donation or ceases to be used by the donee for such purposes within one year of being placed in use.

(iii) The State plan shall require the State agency, insofar as practicable, to select property requested by a public agency or other eligible institution within the State and, if so requested by the recipient, to arrange shipment of that property, when acquired, directly to the recipient.

(D) Where the State agency is authorized to assess and collect service charges from participating recipients to cover direct and reasonable indirect costs of its activities, the method of establishing such charges shall be set out in the State plan of operation. Such charges shall be fair and equitable and shall be based on services performed by the State agency, including, but not limited to, screening, packing, crating, removal, and transportation.

(E) The State plan of operation shall provide that the State agency may impose reasonable terms, conditions, reservations, and restrictions on the use of property to be donated under paragraph (3) of this subsection and shall impose such terms, conditions, reservations, and restrictions in the case of any passenger motor vehicle and any item of other property having a unit acquisition cost of $5,000 or more. If the Administrator finds that an item or items have characteristics that require special handling or use limitations, he may impose appropriate conditions on the donation of such property.

(F) The State plan of operation shall provide that surplus property which the State agency determines cannot be utilized by eligible recipients shall be disposed of—

(i) subject to the disapproval of the Administrator within thirty days after notice to him, through transfer by the State agency to another State agency or through abandonment or destruction where the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale; or

(ii) otherwise pursuant to the provisions of this Act under such terms and conditions and in such manner as may be prescribed by the Administrator.

Notwithstanding sections 204 and 402(c) of this Act, the Administrator, from the proceeds of sale of any such property, may reimburse the State agency for such expenses relating to the care and handling of such property as he shall deem appropriate.

(5) As used in this subsection, (A) the term "public agency" means any State, political subdivision thereof (including any unit of local government or economic development district), or any department, agency, instrumentality thereof (including instrumentalities created by compact or other agreement between States or political subdivision), or any Indian tribe, band, group, pueblo, or community located on a State reservation and (B) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Virgin Islands, Guam, and American Samoa.

(40 U.S.C. 484)

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(Note: For entire text of Federal Property and Administrative Services Act of 1949 and amendments made to the Act, see 40 U.S.C. 471 et. seq.)

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